

The Honorable Marsha J. Pechman

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

YOLANY PADILLA, on behalf of herself and her 6-year-old son J.A.; IBIS GUZMAN, on behalf of herself and her 5-year-old son R.G.; BLANCA ORANTES, on behalf of herself and her 8-year-old son A.M.; BALTAZAR VASQUEZ, on behalf of himself;

Plaintiffs-Petitioners,

V.

U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT (“ICE”); U.S. DEPARTMENT OF HOMELAND SECURITY (“DHS”); U.S. CUSTOMS AND BORDER PROTECTION (“CBP”); U.S. CITIZENSHIP AND IMMIGRATION SERVICES (“USCIS”); EXECUTIVE OFFICE FOR IMMIGRATION REVIEW (“EOIR”); U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES (“HHS”); OFFICE OF REFUGEE RESETTLEMENT (“ORR”); THOMAS HOMAN, Acting Director of ICE; KIRSTJEN NIELSEN, Secretary of DHS; KEVIN K. McALEENAN, Acting Commissioner of CBP; L. FRANCIS CISSNA, Director of USCIS; ALEX M. AZAR II, Secretary of HHS; SCOTT LLOYD, Director of ORR; MARC J. MOORE, Seattle Field Office Director; ICE, JEFFERSON BEAUREGARD SESSIONS III, United States Attorney General; LOWELL CLARK, warden of the Northwest Detention Center in Tacoma, Washington; CHARLES INGRAM, warden of the Federal Detention Center in SeaTac, Washington; DAVID SHINN, warden of the Federal Correctional Institute in Victorville, California;

Defendants-Respondents.

No. 2:18-cv-928 MJP

**STIPULATION AND
NOTICE REGARDING
SECOND AMENDED
COMPLAINT**

NOTE ON MOTION
CALENDAR:
AUGUST 22, 2018.

**STIPULATION AND
NOTICE REGARDING
SECOND AMENDED
COMPLAINT**

NORTHWEST IMMIGRANT RIGHTS PROJECT
615 Second Avenue, Suite 400
Seattle, WA 98104
Telephone (206) 957-8611

1 Pursuant to Local Civil Rules 7(d)(1) and 10(g), Fed. R. Civ. P. 15(a)(2), and the prior
2 stipulated schedule between the parties (Dkt. # 23) plaintiffs and defendants notify the Court that
3 plaintiffs are filing their second amended complaint with defendants' written consent. For the
4 Court's convenience, a copy of the second amended complaint is attached as Exhibit A and a
5 redline of the second amended complaint showing changes from the first amended complaint is
6 attached as Exhibit B.

7 Subsequent to this Notice, plaintiffs will file the second amended complaint with the
8 Court's ecf system.

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**STIPULATION AND
NOTICE REGARDING
SECOND AMENDED
COMPLAINT- 1**

CASE NO. 2:18-cv-928 MJP

NORTHWEST IMMIGRANT RIGHTS PROJECT
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Telephone (206) 957-8611

1 RESPECTFULLY SUBMITTED this 20th day of August, 2018.
2
3

4 s/ Matt Adams

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59 Assistant Director, District Court Section
60 Office of Immigration Litigation

61 **STIPULATION AND
62 NOTICE REGARDING
63 SECOND AMENDED
64 COMPLAINT- 2**

65 CASE NO. 2:18-cv-928 MJP

66 NORTHWEST IMMIGRANT RIGHTS PROJECT
67 615 Second Avenue, Suite 400
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2 [
3 **CERTIFICATE OF SERVICE**
4

5 I hereby certify that on August 22, 2018, I had the foregoing electronically filed with the
6 Clerk of the Court using the CM/ECF system, which will send notification of such filing to those
7 attorneys of record registered on the CM/ECF system. All other parties (if any) shall be served
8 in accordance with the Federal Rules of Civil Procedure.

9 *s/ Benjamin J. Hodges* _____
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**STIPULATION AND
NOTICE REGARDING
SECOND AMENDED
COMPLAINT- 3**

CASE NO. 2:18-cv-928 MJP

NORTHWEST IMMIGRANT RIGHTS PROJECT
615 Second Avenue, Suite 400
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EXHIBIT A

The Honorable Marsha J. Pechman

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

SECOND AMENDED COMPLAINT - 1
Case No. 2:18-cv-928 MJP

NORTHWEST IMMIGRANT RIGHTS PROJECT
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1 YOLANY PADILLA; IBIS GUZMAN; BLANCA
2 ORANTES; BALTAZAR VASQUEZ;

3 v.
4 Plaintiffs-Petitioners,

5 No. 2:18-cv-928 MJP

6 **SECOND AMENDED
7 COMPLAINT:
8 CLASS ACTION FOR
9 INJUNCTIVE AND
10 DECLARATORY RELIEF**

11 U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT
12 (“ICE”); U.S. DEPARTMENT OF HOMELAND
13 SECURITY (“DHS”); U.S. CUSTOMS AND BORDER
14 PROTECTION (“CBP”); U.S. CITIZENSHIP AND
15 IMMIGRATION SERVICES (“USCIS”); EXECUTIVE
16 OFFICE FOR IMMIGRATION REVIEW (“EOIR”);
17 THOMAS HOMAN, Acting Director of ICE; KIRSTJEN
18 NIELSEN, Secretary of DHS; KEVIN K. McALEENAN,
19 Acting Commissioner of CBP; L. FRANCIS CISSNA,
20 Director of USCIS; MARC J. MOORE, Seattle Field Office
21 Director, ICE; JEFFERSON BEAUREGARD
22 SESSIONS III, United States Attorney General; LOWELL
23 CLARK, warden of the Northwest Detention Center in
24 Tacoma, Washington; CHARLES INGRAM, warden of the
25 Federal Detention Center in SeaTac, Washington; DAVID
26 SHINN, warden of the Federal Correctional Institute in
Victorville, California; JAMES JANECKA, warden of the
Adelanto Detention Facility;

15 Defendants-Respondents.

I. INTRODUCTION

1. This lawsuit initially challenged the legality of the following three parts of the federal government's zero-tolerance policy with respect to persons fleeing for safety and asylum in the United States: (1) family separations, (2) credible fear interviews and determinations, and (3) the related bond hearings.

A. Family Separations

2. This lawsuit previously challenged the legality of the government’s zero-tolerance practice of forcibly ripping children away from parents seeking asylum. The day after plaintiffs filed this suit in the Western District of Washington, however, a federal court in the Southern District of California issued a nationwide preliminary injunction Order against this forcible separation. (*Ms. L v. ICE*, S.D.Cal. case no. 18cv0428 DMS (MDD), docket no. 83).

3. With this Second Amended Complaint, plaintiffs confirm that they will not further pursue those claims in this case.

B. Credible Fear Interviews & Determinations

4. This lawsuit challenges the legality of the government’s policy or practice of excessively prolonging the detention of asylum seekers placed in expedited removal proceedings by failing to promptly provide them their credible fear interview and determination. Federal law requires that persons who have asked for asylum or expressed a fear of persecution must be scheduled for a “credible fear interview” with a DHS official to determine whether that person should be allowed to proceed with applying for asylum because he or she has a credible fear of persecution. If the interviewer determines the asylum seeker does have a credible fear of persecution, the government assigns the case to the federal immigration court for hearings to adjudicate the merits of that person’s asylum claim. If the interviewer determines the asylum seeker does not have a credible fear of persecution, the asylum seeker can appeal that determination to a federal immigration judge. But in either case, the federal government detains the asylum seeker until it determines that she or he has a credible fear of persecution. The *Ms. L*

1 *v. ICE* Order did not address the federal government's lengthy delays in conducting these
 2 statutorily required credible fear interviews and or determinations.

3 **C. Bond Hearings**

4 5. This lawsuit also challenges the legality of the government's related policy or
 5 practice of excessively prolonging the detention of asylum seekers by failing to promptly
 6 conduct the bond hearings required by federal law after an asylum seeker's positive completion
 7 of their credible fear interview. Federal law requires that if an asylum seeker enters the United
 8 States at a location other than a designated "Port Of Entry" and is determined to have a credible
 9 fear of persecution in his or her credible fear interview, that asylum seeker is entitled to an
 10 individualized bond hearing before an immigration judge to determine reasonable conditions for
 11 that person's release from federal detention while he or she awaits the many months it takes to
 12 adjudicate his or her asylum claim (e.g., a reasonable bond amount or parole without posting a
 13 monetary bond). This bond hearing must comport with constitutional requirements. Yet the
 14 government does not establish any timeline for setting this hearing, and as a matter of practice,
 15 does not even audio record or provide a transcript of this hearing for appeal or appellate review
 16 (unlike other hearings in removal proceedings before the immigration judge). The government
 17 also places the burden on asylum seekers to demonstrate in the bond hearing that they should not
 18 continue to be detained throughout the lengthy immigration proceedings. When an immigration
 19 judge denies bond, the immigration judge routinely fails to make specific findings but instead
 20 simply checks a box on a template order. The *Ms. L v. ICE* Order did not address the federal
 21 government's failure to conduct prompt bond hearings that comport with constitutional
 22 requirements.

23 **D. United States Constitution**

24 6. The Bill of Rights prohibits the federal government from depriving any person of
 25 their liberty without due process of law (U.S. Constitution, 5th Amendment).

1 7. Asylum seekers who cross the United States border are persons. They
 2 accordingly have a constitutionally protected liberty interest in (1) not being imprisoned for an
 3 unreasonable time awaiting their credible fear interview and determination and (2) not being
 4 imprisoned without the opportunity for a prompt bond hearing that comports with constitutional
 5 requirements. And especially with respect to the federal government's avowed policy or practice
 6 to deter criminal violations of federal immigration laws, asylum seekers also have a
 7 constitutionally protected interest in (3) not being subjected to prolonged imprisonment for
 8 deterrence or penalty reasons unrelated to adjudicating the merits of their individual asylum
 9 claim.

10 8. With this Second Amended Complaint, plaintiffs specify with more particularity
 11 how defendants' implementation of the federal government's policies and practices with respect
 12 to persons fleeing for safety and seeking asylum in the United States violates the United States
 13 Constitution.

14 **E. Federal Law**

15 9. Federal law prohibits final agency action that is arbitrary, capricious, unlawfully
 16 withheld, or unreasonably delayed (e.g., Administrative Procedures Act, 5 U.S.C. §706). Federal
 17 law also grants persons fleeing persecution the right to apply for safety and asylum in the United
 18 States (e.g., 8 U.S.C. §§ 1225 & 1158; 8 C.F.R. §§ 235.3, 208.30, & 1003.42).

19 10. Federal law accordingly prohibits federal agencies from arbitrarily or capriciously
 20 depriving an asylum seeker of their child, their prompt credible fear interview and determination,
 21 or their prompt bond hearing. Federal law prohibits federal agencies from unlawfully
 22 withholding or unreasonably delaying an asylum seeker's reunification with their child, an
 23 asylum seeker's credible fear interview and determination, or an asylum seeker's bond hearing.
 24 And federal law prohibits federal agencies from impeding or seeking to deter an asylum seeker's
 25 legal right to apply for asylum.

11. With this Second Amended Complaint, plaintiffs specify with more particularity how defendants' implementation of the federal government's policies and practices with respect to persons fleeing for safety and asylum in the United States violates federal law.

F. Requested Relief

12. With respect to (1) credible fear interviews and determinations and (2) the related bond hearings, plaintiffs request injunctive relief requiring defendants to cease their policies and practices implementing the federal government's policy or practice in violation of the United States Constitution and federal law. Plaintiffs request declaratory relief to terminate the parties' disagreement with respect to whether (and how) defendants' implementation of the federal government's policies or practices with respect to persons fleeing for safety and asylum in the United States violates the United States Constitution and federal law. Lastly, plaintiffs request whatever additional relief this Court finds warranted, just, or equitable.

II. JURISDICTION

13. This case arises under the Fifth Amendment of the United States Constitution, the
Administrative Procedures Act (“APA”), and federal asylum statutes. This Court has jurisdiction
under 28 U.S.C. § 1331 (federal question jurisdiction); 28 U.S.C. § 2241 (habeas jurisdiction);
and Article I, § 9, clause 2 of the United States Constitution (“Suspension Clause”).

14. The original plaintiffs in this case were all in custody for purposes of habeas jurisdiction when this action was filed on June 25, 2018.

15. After this action was filed, plaintiffs Padilla, Orantes, and Guzman were eventually released from detention after they were eventually provided a credible fear interview and individualized bond hearings before an immigration judge. At the time this Second Amended Complaint is electronically filed on August 22, 2018, plaintiff Vasquez is still in custody for purposes of habeas jurisdiction.

16. At the time this Second Amended Complaint is electronically filed on August 22, 2018, all the children that the federal government took away from plaintiffs have been returned to their mothers after approximately two months of being separated.

III. VENUE

17. Venue lies in this District under 28 U.S.C. § 1391 because a substantial portion of the relevant facts occurred within this District. Those facts include defendants' detention of plaintiffs Padilla, Guzman, and Orantes in this District while forcibly separated from their children, failure in this District to promptly conduct a credible fear interview and determination for their asylum claims, and failure in this District to promptly conduct bond hearings that comport with constitutional requirements to set reasonable conditions for release pending adjudication of their asylum claims.

IV. PARTIES

18. Plaintiff **Yolany Padilla** is a human being seeking asylum for herself and her 6-year-old son (J.A) in the United States. She is a citizen of Honduras.

19. Plaintiff **Ibis Guzman** is a human being seeking asylum for herself and her 5-year-old son (R.G.) in the United States. She is a citizen of Honduras.

20. Plaintiff **Blanca Orantes** is a human being seeking asylum for herself and her 8-year-old son (A.M.) in the United States. She is a citizen of El Salvador.

21. Plaintiff **Baltazar Vasquez** is a human being seeking asylum in the United States. He is a citizen of El Salvador.

22. Defendant U.S. Immigration and Customs Enforcement (“ICE”) is the federal government agency that carries out removal orders and oversees immigration detention. ICE is part of DHS. ICE’s responsibilities include determining whether an asylum seeker will be released and how soon his or her case will be submitted for a credible fear interview and subsequent proceedings on the merits before the immigration court. ICE’s local field office in Tukwila, Washington, is responsible for determining whether plaintiffs detained in Washington

1 will be released, and how soon their cases will be submitted for credible fear interview and
2 subsequent proceedings before the immigration court.

3 23. Defendant U.S. Department of Homeland Security (“DHS”) is the federal
4 government agency that enforces immigration laws of the United States. DHS’s responsibilities
5 include determining whether an asylum seeker will be released and how soon his or her case will
6 be submitted for a credible fear interview and subsequent proceedings before the immigration
7 court. DHS’s local field office in Tukwila, Washington, is responsible for determining whether
8 plaintiffs detained in Washington will be released, and how soon their cases will be submitted for
9 credible fear interview and subsequent proceedings before the immigration court.

10 24. Defendant U.S. Customs and Border Protection (“CBP”) is the federal
11 government agency that conducts the initial processing and detention of asylum seekers crossing
12 the U.S. border. CBP is part of DHS. CBP’s responsibilities include determining whether an
13 asylum seeker will be released and how soon his or her case will be submitted for a credible fear
14 interview and determination.

15 25. Defendant U.S. Citizenship and Immigration Services (“USCIS”) is the federal
16 government agency that, through its asylum officers, interviews asylum seekers to determine
17 whether they should be assigned to the immigration court to be allowed to proceed with applying
18 for asylum because they have a credible fear of persecution. USCIS is a part of DHS.

19 26. Defendant Executive Office for Immigration Review (“EOIR”) is the federal
20 government agency that is responsible for conducting immigration court proceedings, including
21 adjudicating plaintiffs’ asylum claims in removal proceedings and conducting individual bond
22 hearings for persons in removal proceedings. EOIR is a part of the Department of Justice.

23 27. Defendant Thomas Homan is sued in his official capacity as the Director of ICE,
24 and is a legal custodian of plaintiff Vasquez and putative class members.

25 28. Defendant Marc J. Moore is sued in his official capacity as the ICE Seattle Field
26 Office Director, and is a legal custodian of detained plaintiffs.

29. Defendant Kirstjen Nielsen, is sued in her official capacity as the Secretary of DHS. In this capacity, she directs DHS, ICE, CBP, and USCIS. As a result, defendant Nielsen has responsibility for the administration of immigration laws pursuant to 8 U.S.C. §1103 and is a legal custodian of detained plaintiffs.

30. Defendant Kevin K. McAleenan is sued in his official capacity as the Commissioner of CBP.

31. Defendant L. Francis Cissna is sued in his official capacity as the Director of USCIS.

32. Defendant Jefferson Beauregard Sessions III is sued in his official capacity as the United States Attorney General. In this capacity, he directs agencies within the United States Department of Justice, including EOIR. Defendant Sessions has responsibility for the administration of immigration laws pursuant to 8 U.S.C. §1103, oversees defendant EOIR, and is empowered to grant asylum or other relief, including custody determinations made for persons in removal proceedings.

33. Defendant Lowell Clark is sued in his official capacity as the warden of the Northwest Detention Center in Tacoma, Washington.

34. Defendant Charles Ingram is sued in his official capacity as the warden of the Federal Detention Center in SeaTac, Washington.

35. Defendant David Shinn is sued in his official capacity as the warden of the Federal Correctional Institute in Victorville, California.

36. Defendant James Janecka is sued in his official capacity as the warden of the Adelanto Detention Facility in Adelanto, California.

V. FACTS

A. Seeking Asylum

37. Federal law allows a person to seek asylum in the United States.

38. Plaintiffs are persons seeking asylum in the United States.

1 39. Plaintiff **Yolany Padilla** and her 6-year-old son J.A. are asylum seekers who fled
 2 physical danger and persecution in Honduras.

3 40. On or about May 18, 2018, plaintiff Yolany Padilla and her 6-year-old son J.A
 4 crossed the U.S.-Mexico border . They were arrested by a CBP agent as they were making their
 5 way to the closest Port Of Entry. She informed the CBP agent that they were seeking asylum.

6 41. Plaintiff **Ibis Guzman** and her 5-year-old son R.G. are asylum seekers who fled
 7 physical danger and persecution in Honduras.

8 42. On or about May 16, 2018, plaintiff Ibis Guzman and her 5-year-old son R.G.
 9 crossed the U.S.-Mexico border. They were arrested by a CBP agent. She informed the CBP
 10 agent that they were seeking asylum.

11 43. Plaintiff **Blanca Orantes** and her 8-year-old son A.M. are asylum seekers who
 12 fled physical danger and persecution in El Salvador.

13 44. On or about May 21, 2018, plaintiff Blanca Orantes and her 8-year-old son A.M.
 14 crossed the U.S.-Mexico border. They immediately walked to the CBP station to request
 15 asylum, and were arrested by a CBP agent. She informed the CBP agent that they were seeking
 16 asylum.

17 45. Plaintiff **Baltazar Vasquez** is an asylum seeker who fled physical danger and
 18 persecution in El Salvador.

19 46. On or about June 1, 2018, Baltazar Vasquez crossed the U.S.-Mexico border. He
 20 was arrested by a CBP agent, and informed the CBP agent that he was seeking asylum.

21 **B. Defendants' Zero-Tolerance Policy or Practice**

22 47. Defendant Sessions made an announcement about the federal government's
 23 "Zero-Tolerance Policy" on April 6, 2018, *See* <https://www.justice.gov/opa/pr/attorney-general-announces-zero-tolerance-policy-criminal-illegal-entry>.

25 48. The federal government's zero-tolerance policy was designed to be a coordinated
 26 effort to deter asylum seekers entering the country and exercising their right to apply for asylum

1 by criminally prosecuting them, forcibly separating them from their children, and imposing
 2 prolonged, uncertain imprisonment (euphemistically called “detention”) on them.

3 49. The federal government’s zero-tolerance policy has been implemented against
 4 asylum seekers who enter the country without inspection requesting asylum.

5 50. The federal government’s zero-tolerance policy has also been implemented
 6 against asylum seekers who appear at a Port Of Entry to request asylum.

7 **C. Promptly Taking Children Away From Parents Seeking Asylum**

8 51. One part of the federal government’s zero-tolerance policy or practice was to
 9 promptly take children away from parents seeking asylum in the United States.

10 52. The federal government would send the parent and child to separate federal
 11 detention facilities – often in different states thousands of miles away from each other.

12 53. A child’s forced separation from a parent causes the child severe trauma. This
 13 damage is even worse for children who are already traumatized from fleeing danger and
 14 persecution in their home country. The cognitive and emotional damage caused by a child’s
 15 forced separation from a parent can be permanent.

16 54. A parent’s forced separation from their child is also deeply damaging to the
 17 parent. This damage is even worse for parents who are already traumatized from fleeing danger
 18 and persecution in their home country, are given little to no information regarding the well-being
 19 or whereabouts of their child, and fear they may never see their child again.

20 55. The federal government promptly tooks children away from parents seeking asylum
 21 in the United States without any demonstration in a hearing that that parent is unfit or presents
 22 any danger to the child.

23 56. The federal government promptly took children away from parents seeking
 24 asylum in the United States without any evidence or accusation that the parent seeking asylum is
 25 an unfit parent, or presents a danger to the child, or is not acting in the child’s best interest, or is
 26 a threat to the child’s safety, or abused the child, or neglected the child.

1 57. The federal government promptly took children away from parents seeking
 2 asylum in the United States to penalize and deter persons from seeking asylum.

3 58. The federal government promptly took children away from parents seeking
 4 asylum in the United States as part of its zero-tolerance policy against criminal violations of
 5 federal immigration laws.

6 59. Plaintiffs Yolany Padilla, Ibis Guzman, and Blanca Orantes are parents who
 7 sought asylum and were (1) detained in immigration custody by defendants in Washington State
 8 and (2) separated from a minor child by defendants without any demonstration in a hearing that
 9 that parent is unfit or presents a danger to the child.

10 60. When plaintiff **Yolany Padilla** and her 6-year-old son J.A were taken into
 11 custody, a federal agent promptly announced that Yolany Padilla's son would be taken away
 12 from her. Her 6-year-old son clutched his mother's shirt and said, "no, mommy, I don't want to
 13 go." She reassured her son that any separation would be short, and that everything would be
 14 okay. She was able to stay with her son as they were transferred to one of the federal detention
 15 buildings that detainees commonly refer to as "the hielera" ("the freezer") because of its cold
 16 temperatures. Once they arrived, Yolany Padilla's 6-year-old son was forcibly taken away from
 17 her without explanation.

18 61. Yolany Padilla's 6-year-old son was taken away from her without any hearing,
 19 and without any accusation or evidence that she is in any way an unfit parent, or that she is in
 20 any way not acting in his best interest fleeing for safety in the United States, or that she is in any
 21 way a threat to his safety, or that she in any way abused him, or that she in any way neglected
 22 him.

23 62. Yolany Padilla was then transferred to another federal facility in Laredo, Texas
 24 about three days later. The federal officers in that facility took her son's birth certificate from
 25 her. When she asked for it back, she was told the immigration authorities had it. No one has
 26 returned her son's birth certificate to her.

1 63. About twelve days later, Yolany Padilla was transferred to the Federal Detention
 2 Center in SeaTac, Washington.

3 64. Despite repeated inquiries into her son's whereabouts, Yolany Padilla was not
 4 provided any information about her son until about a month into her detention, when the
 5 Honduran consul visited the detention center and she explained she had no news of her son.
 6 Soon thereafter she was given a piece of paper saying her son had been put in a place called
 7 "Cayuga Center" in New York. That piece of paper also had a phone number, but she was not
 8 able to call her son that day because she did not have money to make a long distance phone call.

9 65. The next day, someone gave Yolany Padilla the opportunity to call her son for
 10 about ten minutes. Her 6-year-old son mostly cried quietly.

11 66. Yolany Padilla was not released from federal imprisonment until July 6, 2018,
 12 after an immigration judge finally granted her a bond.

13 67. Yolany Padilla's 6-year-old son was not released from federal imprisonment until
 14 July 14, 2018. That was almost two months after the federal government forcibly took him away
 15 from his mom.

16 68. CBP transported plaintiff **Ibis Guzman** and her 5-year-old son R.G. to one of the
 17 federal detention buildings in Texas that detainees commonly refer to as "the hielera" ("the
 18 freezer") because of its cold temperatures. One CBP agent questioned Ibis Guzman, and
 19 another CBP agent forcibly took her son away stating she would see her son again in three days.

20 69. Ibis Guzman's 5-year-old son was taken away from her without any hearing, and
 21 without any accusation or evidence that she is in any way an unfit parent, or that she is in any
 22 way not acting in his best interest fleeing for safety in the United States, or that she is in any way
 23 a threat to his safety, or that she in any way abused him, or that she in any way neglected him.

24 70. After three days, Ibis Guzman was transferred to a different CBP facility in
 25 Texas. When she asked the federal agents there about the reunification with her son that the
 26 CBP agent had promised, they told her they did not know anything about her son's whereabouts.

1 71. Ibis Guzman was then transferred to another federal facility in Laredo, Texas,
 2 where she was detained without any knowledge of the whereabouts of her 5-year-old son and
 3 without any means to contact him. She did not receive any information about him during this
 4 time, despite her repeated attempts to obtain such information.

5 72. About two weeks later, Ibis Guzman was transferred to the Federal Detention
 6 Center in SeaTac, Washington.

7 73. Ibis Guzman was not provided any information about her 5-year-old son until
 8 about a week later, when she was told that her son had been given to a place called “Baptist
 9 Child and Family Services” in San Antonio, Texas. But she was still not able to contact him.

10 74. On June 20, 2018, Ibis Guzman was transferred to the Northwest Detention
 11 Center in Tacoma, Washington.

12 75. Ibis Guzman was denied bond by the immigration judge at her bond hearing on
 13 July 3, 2018.

14 76. She was not released until on or about July 31, 2018, after the federal government
 15 was forced to comply with the preliminary injunction in *Ms. L.*, and thereafter reunited with her
 16 child.

17 77. CBP transported plaintiff **Blanca Orantes** and her 8-year-old son A.M. to a
 18 federal detention facility in Texas. CBP agents led Blanca Orantes into one of the federal
 19 detention buildings that detainees commonly refer to as “the hielera” (“the freezer”) because of
 20 its cold temperatures, and took her 8-year-old son to another part of that detention facility.

21 78. While a CBP agent was later interviewing Blanca Orantes, another agent brought
 22 her 8-year-old son to her and told her to “say goodbye” to him because they were being
 23 separated. Her 8-year-old son began crying and pleading for his mom not to leave him.

24 79. Blanca Orantes’ 8-year-old son was taken away from her without any hearing,
 25 and without any accusation or evidence that she is in any way an unfit parent, or that she is in
 26 any way not acting in his best interest fleeing for safety in the United States, or that she is in any

1 way a threat to his safety, or that she in any way abused him, or that she in any way neglected
2 him.

3 80. On or around May 24, 2018, Blanca Orantes was handcuffed and taken to court.
4 She pled guilty to improper entry under 8 U.S.C. §1325 and was sentenced to time served. She
5 was then returned to her cell.

6 81. About nine days later, Blanca Orantes was transported to the Federal Detention
7 Center in SeaTac, Washington.

8 82. The federal government did not provide Blanca Orantes any information about
9 her 8-year-old son until June 9, 2018, when an ICE officer handed her a slip of paper saying her
10 son was being held at place called “Children’s Home of Kingston” in Kingston, New York.

11 83. On June 20, 2018, Blanca Orantes was transferred to the Northwest Detention
12 Center in Tacoma, Washington, where she was finally allowed to speak to her 8-year-old son by
13 telephone.

14 84. Blanca Orantes was denied bond by the immigration judge at her bond hearing on
15 July 16, 2018.

16 85. She was not released until on or about July 24, 2018, in order to comply with the
17 preliminary injunction in *Ms. L.*, and thereafter reunited with her child.

18 **D. Failing To Promptly Provide The Credible Fear Interview & Determination
19 Required By Federal Law**

20 86. One part of the federal government’s policy or practice is to keep asylum seekers
21 in limbo in federal detention by delaying the threshold credible fear interview to which asylum
22 seekers are entitled under federal law.

23 87. Detained asylum seekers who are subject to expedited removal are not permitted
24 to move forward with their asylum claims until a credible fear determination has been made by a
25 DHS official.

1 88. The federal government keeps asylum seekers in limbo in federal detention by
2 delaying their credible fear interview in part to penalize and deter persons from seeking asylum.

3 89. The federal government keeps asylum seekers in limbo in federal detention by
4 delaying their credible fear interview.

5 90. The federal government has not established any procedural timeframes for
6 providing asylum seekers the credible fear interview and determinations required by federal law.

7 91. Plaintiffs Yolany Padilla, Ibis Guzman, Blanca Orantes, and Baltazar Vasquez are
8 detained asylum seekers subject to expedited removal proceedings under 8 U.S.C. § 1225(b) who
9 were not provided a credible fear interview and determination within 10 days of requesting
10 asylum or expressing a fear of persecution to a DHS official.

11 92. When plaintiff **Yolany Padilla** first spoke with the CBP agent on or about
12 May 18, 2018, she told the CBP agent that she and her son were requesting asylum.

13 93. Neither Yolany Padilla nor her son were provided a credible fear interview within
14 10 days of requesting asylum or expressing a fear of persecution to a DHS official.

15 94. Neither Yolany Padilla nor her son were provided a credible fear interview as of
16 the date this lawsuit was originally filed on June 25, 2018.

17 95. Instead, Yolany Padilla was not provided her credible fear interview until July 2,
18 2018. That was more than a month after federal officials imprisoned her. The DHS official
19 conducting her credible fear interview determined that Yolany Padilla does have a credible fear
20 of persecution, and therefore assigned her asylum claim to immigration court for adjudication on
21 the merits

22 96. When plaintiff **Ibis Guzman** first spoke with the CBP agent on or about May 16,
23 2018, she told the CBP agent that she and her son were requesting asylum.

24 97. Neither Ibis Guzman nor her son were provided a credible fear interview within
25 10 days of requesting asylum or expressing a fear of persecution to a DHS official.

1 98. Neither Ibis Guzman nor her son were provided a credible fear interview as of the
2 date this lawsuit was originally filed on June 25, 2018.

3 99. Instead, Ibis Guzman was not provided her credible fear interview until June 27,
4 2018. That was more than a month after federal officials imprisoned her. The DHS official
5 conducting her credible fear interview determined that Ibis Guzman does have a credible fear of
6 persecution, and therefore assigned her asylum claim to immigration court for adjudication on
7 the merits.

8 100. When plaintiff **Blanca Orantes** first spoke with the CBP agent on or about
9 May 21, 2018, she told the CBP agent that she and her son were requesting asylum.

10 101. Neither Blanca Orantes nor her son were provided a credible fear interview within
11 10 days of requesting asylum or expressing a fear of persecution to a DHS official.

12 102. Neither Blanca Orantes nor her son were provided a credible fear interview as of
13 the date this lawsuit was originally filed on June 25, 2018.

14 103. Instead, Blanca Orantes was not provided her credible fear interview until
15 June 27, 2018. That was more than a month after federal officials imprisoned her. The DHS
16 official conducting her credible fear interview determined that Blanca Orantes does have a
17 credible fear of persecution, and therefore assigned her asylum claim to immigration court for
18 adjudication on the merits.

19 104. When plaintiff **Baltazar Vasquez** first spoke with the CBP agent on or about
20 June 1, 2018, he told the CBP agent that he was requesting asylum.

21 105. Baltazar Vasquez was not provided a credible fear interview within 10 days of
22 requesting asylum or expressing a fear of persecution to a DHS official.

23 106. Baltazar Vasquez was not provided a credible fear interview as of the date this
24 lawsuit was originally filed on June 25, 2018.

25 107. Baltazar Vasquez was not scheduled for a credible fear interview until after the
26 First Amended Complaint was electronically filed on July 15, 2018.

1 108. Baltazar Vasquez was not provided his credible fear interview until July 31, 2018.
 2 That was almost two months after federal officials imprisoned him. The DHS official conducting
 3 his credible fear interview determined that Baltazar Vasquez does have a credible fear of
 4 persecution, and therefore referred his case to an immigration court for adjudication of the merits
 5 of his asylum claim.

6 109. Baltazar Vasquez is currently imprisoned at the Adelanto Detention facility in
 7 Adelanto, California.

8 **E. Failing To Promptly Provide The Bond Hearing Required By Federal Law**

9 110. One part of the federal government's policy or practice is to prolong
 10 imprisonment without a proper bond hearing for asylum seekers who entered the United States
 11 without inspection.

12 111. The federal government keeps asylum seekers in limbo in federal detention by
 13 delaying their bond hearing in part to penalize and deter persons from seeking asylum.

14 112. The federal government keeps asylum seekers in limbo in federal detention by
 15 delaying their bond hearing.

16 113. The federal government has not established any procedural timeframes for timely
 17 providing the bond hearings required by federal law. The federal government has not established
 18 basic procedural safeguards for bond hearings such as verbatim transcripts or audio recordings of
 19 bond hearings. The absence of such basic safeguards impedes an imprisoned asylum seeker's
 20 ability to meaningful appeal the denial of bond in their individual case as not being based on
 21 evidence of legally relevant factors (i.e., being a flight risk or danger to the community) instead
 22 of legally irrelevant factors (e.g., the zero-tolerance policy's general goal of punishing and
 23 deterring asylum seekers). Defendant EOIR maintains audio recordings of proceedings before
 24 an Immigration Judge other than bond hearings, and provides verbatim transcripts on appeals to
 25 the Board of Immigration Appeals. But Defendant EOIR does not maintain audio recordings of
 26 an asylum seeker's bond hearing or provide verbatim transcripts for appeal of bond hearing

1 determinations. Indeed, when an immigration judge denies bond, they routinely do not make
 2 specific, particularized findings, and instead simply check a box on a template order. Moreover,
 3 Defendants place the burden of proof on the noncitizen to demonstrate that they should not
 4 continue to be detained throughout their lengthy immigration proceedings.

5 114. Plaintiff **Yolany Padilla** is an asylum seeker who originally entered the United
 6 States without inspection, was initially subject to expedited removal proceedings under
 7 8 U.S.C. §1225(b) and detained, was determined to have a credible fear of persecution, but was
 8 not provided a timely bond hearing with a verbatim transcript or audio recording.

9 115. The federal government did not provide Yolany Padilla a bond hearing until after
 10 she filed this lawsuit. At the conclusion of that bond hearing, an order was issued allowing her
 11 to be released from federal detention upon posting an \$8,000 bond pending the adjudication of
 12 her asylum claim on the merits. To her knowledge, there is no verbatim transcript or recording
 13 of her bond hearing. At the bond hearing, the immigration judge placed the burden of proof on
 14 Yolany Padilla to demonstrate that she qualified for a bond.

15 116. Plaintiffs **Ibis Guzman** is a detained asylum seeker who originally entered the
 16 United States without inspection, was initially subject to expedited removal proceedings under
 17 8 U.S.C. §1225(b), was determined to have a credible fear of persecution, but was not provided a
 18 timely bond hearing with a verbatim transcript or audio recording.

19 117. The federal government did not provide Ibis Guzman a bond hearing until after
 20 she filed this lawsuit. At the bond hearing, the immigration judge placed the burden of proof on
 21 Ibis Guzman to demonstrate that she qualified for a bond. At the conclusion of that bond
 22 hearing, an immigration judge issued an order denying her release on *any* bond amount pending
 23 the adjudication of her asylum claim on the merits.

24 118. The immigration judge did not make specific, particularized findings for the basis
 25 of the denial. The immigration judge circled the preprinted words “Flight Risk” on a form order,
 26 rendering her ineligible for bond even though a DHS official had already determined she has a

1 credible fear of persecution and even though the federal government has taken away her
2 6-year-old son.

3 119. The immigration judge provided no written explanation for circling “Flight Risk”
4 or the factors and evidence considered in making that conclusion to deny bond. Per defendant
5 EOIR’s practice, there is no verbatim transcript or recording of her bond hearing. She was not
6 released until on or about July 31, 2018, in order to comply with the preliminary injunction in
7 *Ms. L.*

8 120. Plaintiff **Blanca Orantes** is a detained asylum seeker who originally entered the
9 United States without inspection, was initially subject to expedited removal proceedings under
10 8 U.S.C. §1225(b), was determined to have a credible fear of persecution once she was
11 eventually provided her credible fear interview and determination, but was not provided a bond
12 hearing with a verbatim transcript or recording of the hearing within 7 days of requesting a bond
13 hearing.

14 121. Blanca Orantes was not provided a bond hearing until July 16, 2018. At the bond
15 hearing, the immigration judge placed the burden of proof on Blanca Orantes to demonstrate that
16 she qualified for a bond. At the conclusion of that bond hearing, an immigration judge issued an
17 order denying her release on *any* bond amount pending the adjudication of her asylum claim on
18 the merits.

19 122. The immigration judge did not make specific, particularized findings for the basis
20 of the denial, and even failed to check the box indicating why she was denied bond on the
21 template order. Per defendant EOIR’s practice, there is no verbatim transcript or recording of her
22 bond hearing. At the bond hearing the immigration judge placed the burden on Blanca Orantes
23 to demonstrate that she was qualified for a bond.

24 123. She was not released until on or about July 23, 2018, after the federal government
25 was forced to comply with the preliminary injunction in *Ms. L.*, and thereafter reunited her with
26 her child.

124. Plaintiff **Baltazar Vasquez** is a detained asylum seeker who originally entered the United States without inspection, was initially subject to expedited removal proceedings under 8 U.S.C. §1225(b), was determined to have a credible fear of persecution once he was eventually provided his credible fear interview and determination, but was not provided a bond hearing with a verbatim transcript or recording of the hearing within 7 days of requesting a bond hearing.

125. The federal government did not provide Baltazar Vasquez a bond hearing until August 20, 2018. At the bond hearing, the immigration judge placed the burden of proof on Baltazar Vasquez to demonstrate that he qualified for a bond. At the conclusion of that bond hearing, an order was issued allowing him to be released from federal detention upon posting a \$9,000 bond pending the adjudication of his asylum claim on the merits. There is no verbatim transcript or recording of his bond hearing.

VI. CLASS ALLEGATIONS

126. The named plaintiffs are asylum seekers who filed this suit on behalf of themselves and their family members being detained in federal detention.

127. The named plaintiffs also bring this suit as a class action under Fed.R.Civ.P. 23(b) on behalf of the other similarly situated persons specified in the two classes of asylum seekers specified in Part VI of this Second Amended Complaint.

A. "Credible Fear Interview Class"

128. With respect to plaintiffs' claims concerning defendants' failure to promptly provide asylum seekers a credible fear interview and determination, plaintiffs seek to represent the following class (the "**credible fear interview class**"):

All detained asylum seekers in the United States subject to expedited removal proceedings under 8 U.S.C. §1225(b) who are not provided a credible fear determination within 10 days of requesting asylum or expressing a fear of persecution to a DHS official, absent a request by the asylum seeker for a delayed credible fear interview.

1 129. Plaintiffs allege the following on information and belief: At least several hundred
 2 asylum seekers currently fit within the **credible fear interview class**. Defendants should know
 3 the precise number since the members of this class should be readily ascertainable through
 4 defendants' records.

5 130. The **credible fear interview class** satisfies Rule 23(a)(1). This class is so
 6 numerous that joinder of all class members is impracticable.

7 131. The **credible fear interview class** satisfies Rule 23(a)(2). There are questions of
 8 law or fact common to this class. Given the definition of this class, its members all share the
 9 same common factual situation of being a detained asylum seeker subject to defendants' practice
 10 of failing to provide a credible fear interview and determination within 10 days of their
 11 expressing a fear of persecution or a request for asylum to a DHS official, despite the fact they
 12 have been placed in expedited removal proceedings under 8 USC § 1225(b), which requires
 13 immediate action. The members of this class share common questions of law governing whether
 14 defendants' practice of failing to provide class members a credible fear interview and
 15 determination within 10 days of their expressing a fear of persecution or a request for asylum to
 16 a DHS official is legal under the Fifth Amendment, APA, or federal asylum statutes.

17 132. The **credible fear interview class** satisfies Rule 23(a)(3). Plaintiffs' claims
 18 concerning the legality of defendants' practice of failing to provide a credible fear interview and
 19 determination within 10 days of their expressing a fear of persecution or a request for asylum to
 20 a DHS official are typical of the claims of class members. As noted in the prior paragraph, the
 21 definition of this class dictates that plaintiffs share with the other class members the same
 22 common factual situation and the same common questions of law under the Fifth Amendment,
 23 APA, and federal asylum statutes.

24 133. The **credible fear interview class** satisfies Rule 23(a)(4). Plaintiffs will fairly
 25 and adequately protect the interests of that class. They are represented by counsel from the
 26 Northwest Immigrant Rights Project and the American Immigration Council, who have extensive

1 experience litigating class action lawsuits and other complex cases in federal court, including
 2 civil rights lawsuits on behalf of noncitizens.

3 134. The **credible fear interview class** satisfies Rule 23(b)(1). Requiring separate
 4 actions by the members of this class would create the risk of inconsistent or varying
 5 adjudications with respect to individual class members that would establish incompatible
 6 standards of conduct for defendants. Requiring separate actions by the members of this class
 7 would create the risk of adjudications with respect to individual class members that, as a
 8 practical matter, would be dispositive of the interests of the other class members not parties to
 9 the individual adjudications, or would at least substantially impair or impede their ability to
 10 protect their interests.

11 135. The **credible fear interview class** satisfies Rule 23(b)(2). Defendants have acted
 12 or refused to act on grounds that apply generally to this class. Final injunctive relief or
 13 corresponding declaratory relief is appropriate with respect to the class as a whole, especially as
 14 it involves uniform, federal immigration law and plaintiffs are transferred across the country by
 15 defendants. Moreover, requiring separate actions by the members of this class would create the
 16 risk of inconsistent or varying adjudications with respect to individual class members that would
 17 establish incompatible standards of conduct for defendants.

18 136. The **credible fear interview class** satisfies Rule 23(b)(3). Questions of law or
 19 fact common to members of this class predominate over questions affecting only individual
 20 members. A class action is superior to other available methods for fairly and efficiently
 21 adjudicating the legality of defendants' practice of failing to provide a credible fear interview
 22 and determination within 10 days of a person's expressing a fear of persecution or requesting
 23 asylum.

24 B. **"Bond Hearing Class"**

25 137. With respect to plaintiffs' claims concerning defendants' failure to promptly
 26 conduct a bond hearing to set reasonable conditions for the asylum seeker's release pending the

1 lengthy proceedings to adjudicate his or her asylum claim, and to provide a bond hearing that
 2 comports with the requirements of due process, plaintiffs seek to represent the following class
 3 (the “**bond hearing class**”):

4 All detained asylum seekers who entered the United States without inspection, who were
 5 initially subject to expedited removal proceedings under 8 U.S.C. §1225(b), who were
 6 determined to have a credible fear of persecution, but who are not provided a bond
 7 hearing with a verbatim transcript or recording of the hearing within 7 days of requesting
 8 a bond hearing.

9 138. Plaintiffs allege the following on information and belief: At least several hundred
 10 asylum seekers currently fit within the **bond hearing class**. Defendants should know the precise
 11 number since the members of this class should be readily ascertainable through defendants’
 12 records.

139. The **bond hearing class** satisfies Rule 23(a)(1). This class is so numerous that
 14 joinder of all class members is impracticable.

140. The **bond hearing class** satisfies Rule 23(a)(2). There are questions of law or
 15 fact common to this class. Given the definition of this class, its members all share the same
 16 common factual situation of being asylum seekers who entered the United States without
 17 inspection, were initially subject to expedited removal proceedings, were found to have a
 18 credible fear of persecution, but were then subject to defendants’ practice of failing to provide a
 19 bond hearing with a transcript or recording of the hearing within 7 days of their requesting a
 20 bond hearing. Moreover, defendant EOIR placed the burden on class members to demonstrate in
 21 bond hearings that plaintiffs are eligible for release, and defendants EOIR failed to make any
 22 specific, particularized findings of fact when denying release. The members of this class share
 23 common questions of law governing whether defendants’ practice of failing to provide a bond
 24 hearing with a transcript or recording of the proceeding within 7 days of their requesting a bond
 25 hearing, Defendant EOIR’s practice of placing the burden of proof on the detained asylum seeker
 26 to demonstrate their eligibility for release, and Defendant EOIR’s failure to make specific,

1 particularized findings when denying release, is legal under the Fifth Amendment, APA, or
 2 federal asylum statutes.

3 141. The **bond hearing class** satisfies Rule 23(a)(3). Plaintiffs' claims concerning the
 4 legality of defendants' practice of failing to provide a bond hearing with a transcript or recording
 5 of the proceeding within 7 days of an asylum seeker's requesting a bond hearing, Defendant
 6 EOIR's practice of placing the burden of proof on the detained asylum seeker to demonstrate
 7 they are eligible for release , and Defendant EOIR's failure to make specific findings when
 8 denying release, are typical of the claims of class members. As noted in the prior paragraph, the
 9 definition of this class dictates that plaintiffs share with the other class members the same
 10 common factual situation and the same common questions of law under the Fifth Amendment,
 11 APA, and federal asylum statutes.

12 142. The **bond hearing class** satisfies Rule 23(a)(4). Plaintiffs will fairly and
 13 adequately protect the interests of that class. They are represented by counsel from the
 14 Northwest Immigrant Rights Project and the American Immigration Council, who have extensive
 15 experience litigating class action lawsuits and other complex cases in federal court, including
 16 civil rights lawsuits on behalf of noncitizens.

17 143. The **bond hearing class** satisfies Rule 23(b)(1). Requiring separate actions by
 18 the members of this class would create the risk of inconsistent or varying adjudications with
 19 respect to individual class members that would establish incompatible standards of conduct for
 20 defendants. Requiring separate actions by the members of this class would create the risk of
 21 adjudications with respect to individual class members that, as a practical matter, would be
 22 dispositive of the interests of the other class members not parties to the individual adjudications,
 23 or would at least substantially impair or impede their ability to protect their interests.

24 144. The **bond hearing class** satisfies Rule 23(b)(2). Defendants have acted or
 25 refused to act on grounds that apply generally to this class. Final injunctive relief or
 26 corresponding declaratory relief is appropriate with respect to the class as a whole especially as it

involves uniform, federal immigration law and plaintiffs are transferred across the country by defendants. Moreover, requiring separate actions by the members of this class would create the risk of inconsistent or varying adjudications with respect to individual class members that would establish incompatible standards of conduct for defendants.

145. The **bond hearing class** satisfies Rule 23(b)(3). Questions of law or fact common to members of this class predominate over questions affecting only individual members. A class action is superior to other available methods for fairly and efficiently adjudicating the legality of defendants' practice of failing to provide a bond hearing with a transcript or recording of the proceeding within 7 days of an asylum seeker's requesting a bond hearing, defendant EOIR's practice of placing the burden of proof on the detained asylum seeker to demonstrate they are eligible for release, and Defendant EOIR's failure to make specific, particularized findings when denying release.

VII. CAUSES OF ACTION

COUNT I
(Violation of Due Process)

146. All of the foregoing allegations are repeated and re-alleged as though fully set forth herein.

147. The Due Process Clause of the Fifth Amendment applies to all “persons” on United States soil and thus applies to MSS. Guzman, Orantes, Mr. Vasquez and all proposed class members.

148. The named plaintiffs and proposed class members have a constitutionally protected liberty interest in (1) not being imprisoned in federal detention for an unreasonable time awaiting their credible fear interview and determination, (2) not being imprisoned in federal detention for an unreasonable time awaiting their bond hearing, and (3) having a bond hearing that is fair and comports with due process.

1 149. The federal government's imprisoning plaintiffs and members of the Credible
 2 Fear Interview Class in federal detention for an unreasonable time awaiting their credible fear
 3 interview and determination violates their substantive due process rights. The government's
 4 prolonging these asylum seekers' federal detention by delaying their credible fear interview and
 5 determination more than 10 days does not further a legitimate purpose. The government's
 6 prolonging these asylum seekers' federal detention by delaying their credible fear interview and
 7 determination more than 10 days does not further a compelling governmental interest.
 8 Defendants' prolonging their federal detention by delaying their credible fear interview and
 9 determination more than 10 days is a violation of the constitutional substantive due process
 10 rights of plaintiffs and their children as well as of members of the Credible Fear Interview Class.

11 150. The federal government's imprisoning plaintiffs and members of the Credible
 12 Fear Class in federal detention for an unreasonable time awaiting their credible fear interview
 13 and determination violates their procedural due process rights. That ongoing imprisonment
 14 awaiting a credible fear interview and determination is contrary to the law governing expedited
 15 removal proceedings and is imposed without any hearing. Defendants' imprisoning plaintiffs
 16 and members of the Credible Fear Interview Class in federal detention for an unreasonable time
 17 awaiting their credible fear interview and determination is a violation of the constitutional due
 18 process rights of plaintiffs and their children as well as of members of the Credible Fear
 19 Interview Class.

20 151. The federal government's imprisoning plaintiffs and members of the Bond
 21 Hearing Class in federal detention for an unreasonable time awaiting a bond hearing to assess
 22 their eligibility for release pending the lengthy proceedings to adjudicate their asylum claim
 23 violates substantive due process. The government's prolonging these asylum seekers' federal
 24 detention by delaying their bond hearing more than 7 days does not further a legitimate purpose.
 25 The government's prolonging these asylum seekers' federal detention by delaying their bond
 26 hearing more than 7 days does not further a compelling governmental interest. Moreover,

denying release for general deterrence or punishment goals unrelated to the specific factors of whether the individual presents a flight risk or danger to the community unlawfully deprives these asylum seekers of their constitutional right to liberty. Defendants' prolonging plaintiffs' and members of the Bond Hearing Class's federal detention by delaying their bond hearing more than 7 days is a violation of the constitutional substantive process rights of plaintiffs and members of the Bond Hearing Class.

152. The federal government's imprisoning plaintiffs and members of the Bond Hearing Class in federal detention for an unreasonable time awaiting a bond hearing to assess their eligibility for release pending the lengthy proceedings to adjudicate their asylum claim violates procedural due process. That ongoing detention is imposed without providing a bond hearing with a transcript or recording of the hearing and specific, particularized findings with respect to any denial of release, denies plaintiffs and members of the Bond Hearing Class an adequate record to file an administrative appeal or habeas petition. Moreover, denying release for general deterrence goals unrelated to the specific factors of whether the individual presents a flight risk or danger to the community strips detained asylum seekers of a fair hearing. What is more, placing the burden on the noncitizen to demonstrate their eligibility for release also constitutes a violation of their due process rights. Defendants' prolonging plaintiffs' and members of the Bond Hearing Class's federal detention by failing to provide a bond hearing where the burden of proof is on the government and with a verbatim transcript or recording of the hearing within 7 days of requesting a bond is a violation of the constitutional substantive due process rights of plaintiffs and their children as well as of members of the Bond Hearing Class.

COUNT II

(Administrative Procedure Act)

153. All of the foregoing allegations are repeated and re-alleged as though fully set forth herein.

1 154. Defendants' decision to detain plaintiffs and members of the Credible Fear
 2 Interview Class for an unreasonable time awaiting their credible fear interview, without a
 3 compelling justification and without a mechanism, protocol, or system to assure a prompt and
 4 fair credible fear interview and determination, is a final agency action. That action violates
 5 U.S.C. §§706(1) and (2)(A) and (B).

6 155. Defendants' decision to detain plaintiffs and members of the Bond Hearing Class
 7 for an unreasonable time awaiting a bond hearing to set reasonable conditions for their release
 8 pending the lengthy proceedings to adjudicate their asylum claim, without a compelling
 9 justification and without a mechanism, protocol, or system to assure a prompt and fair bond
 10 hearing, is a final agency action. That action violates 5 U.S.C. §§706(1) and (2)(A) and (B).

12 156. Defendants' decision to deny plaintiffs and members of the Bond Hearing Class a
 13 bond hearing with adequate procedural protections, specifically a hearing where the burden of
 14 proof is on the government, a recording or transcript of the hearing available for any subsequent
 15 administrative appeal or habeas petition, and specific, particularized findings of any denial of
 16 release, is a final agency action. That action violates 5 U.S.C. §§706(1) and (2)(A) and (B).

17 157. The APA imposes on federal agencies the duty to conclude matters presented to it
 18 within a "reasonable time." 5 U.S.C. §555(b).

19 158. The APA prohibits agency action that is "unlawfully withheld or unreasonably
 20 delayed." 5 U.S.C. §706(1).

21 159. Defendant DHS and its sub-agencies are required to conduct an interview to
 22 assess whether an asylum seeker has a credible fear of persecution. This obligation is triggered
 23 when Defendants learn of an individual's fear of persecution. *See* 8 U.S.C. §1225(b)(1)(A)(ii).
 24 Asylum seekers are only permitted to raise their claims before an immigration judge after the
 25 asylum officer's credible fear determination. *See* 8 C.F.R. § 208.30(f), (g).

160. Conducting a credible fear interview to determine whether a person seeking asylum has a credible fear of persecution is a discrete, final agency action that DHS is required to take.

161. Defendants' failure to expeditiously conduct a credible fear interview after detaining plaintiffs and members of the Credible Fear Interview class constitutes "an agency action unlawfully withheld or unreasonably delayed" under the APA. *See* 5 U.S.C. § 706(1).

162. If the asylum officer determines that an asylum seeker has a credible fear of persecution, the case is transferred to EOIR for adjudication of the asylum claim by an immigration judge.

163. An asylum seeker in the Bond Hearing Class is entitled to a bond hearing to assess eligibility for his or her release from DHS custody pending the lengthy proceedings to adjudicate his or her asylum claim.

164. Defendant EOIR's failure to promptly conduct a bond hearing for plaintiffs and members of the Bond Hearing Class within 7 days violates defendant's legal duty under the APA to conclude matters presented to it within a reasonable time.

165. Defendant EOIR's failure to conduct a bond hearing for plaintiffs and members of the Bond Hearing Class with appropriate procedural safeguards constitutes an agency action unlawfully withheld or unreasonably delayed in violation of the APA.

COUNT III
(Violation of Asylum Statute)

166. All of the foregoing allegations are repeated and re-alleged as though fully set forth herein.

167. The Immigration and Nationality Act grants noncitizens fleeing persecution the opportunity to apply for asylum in the United States. 8 U.S.C. §1225(b)(1) (expedited removal); 8 C.F.R. §§ 235.3(b)(4), 208.30, & 1003.42; 8 U.S.C. §1158(a)(1).

168. International law likewise recognizes the fundamental human right to asylum of persons fleeing for safety from persecution and torture.

169. Noncitizens fleeing persecution have a private right of action to vindicate their right to apply for and receive asylum in the United States.

170. Defendants' failure to promptly conduct a credible fear interview for plaintiffs and members of the Credible Fear Interview Class violates the asylum statute because it unlawfully infringes on their ability to pursue their asylum claims.

171. Defendants' failure to promptly conduct a bond hearing to assess eligibility for the release of plaintiffs and members of the Bond Hearing Class violates the asylum statute because it unlawfully infringes on their ability to pursue their asylum claims.

VIII. PRAYER FOR RELIEF

Plaintiffs respectfully request that this Court enter judgment against defendants granting the following relief:

- A. Certify the following **Credible Fear Interview Class**: “All detained asylum seekers in the United States subject to expedited removal proceedings under 8 U.S.C. §1225(b) who are not provided a credible fear determination within 10 days of requesting asylum or expressing a fear of persecution to a DHS official.”
- B. Name plaintiffs as representatives of the Credible Fear Interview Class, and appoint their counsel as class counsel.
- C. Declare that defendants have an obligation to provide Credible Fear Interview Class members their credible fear interview and determination within 10 days of that person’s requesting asylum or expressing a fear of persecution to any DHS official.
- D. Preliminarily and permanently enjoin defendants from not providing Credible Fear Interview Class members their credible fear determination within 10 days of that person’s requesting asylum or expressing a fear of persecution to any DHS official.

- 1 E. Certify the following **Bond Hearing Class**: “All detained asylum seekers who
- 2 entered the United States without inspection, were initially subject to expedited
- 3 removal proceedings under 8 U.S.C. §1225(b), were determined to have a credible
- 4 fear of persecution, but are not provided a bond hearing with a verbatim transcript or
- 5 recording of the hearing within 7 days of requesting a bond hearing.”
- 6 F. Name plaintiffs as representatives of the Bond Hearing Class, and appoint their
- 7 counsel as class counsel.
- 8 G. Declare that defendants have an obligation to provide Bond Hearing Class members
- 9 a bond hearing within 7 days of their requesting a hearing to set reasonable conditions
- 10 for their release pending adjudication of their asylum claim.
- 11 H. Declare that defendants have an obligation to provide Bond Hearing Class members
- 12 (including plaintiffs) a bond hearing with adequate procedural safeguards, including a
- 13 verbatim transcript or recording of their bond hearing.
- 14 I. Declare that defendant DHS must bear the burden of proof to show continued
- 15 detention is necessary in civil immigration proceedings.
- 16 J. Declare that in bond hearings immigration judges must make specific, particularized
- 17 written findings as to the basis for denying release from detention, including findings
- 18 identifying the basis for finding that the individual is a flight risk or a danger to the
- 19 community.
- 20 K. Preliminarily and permanently enjoin defendants from not providing Bond Hearing
- 21 Class members their bond hearing with a verbatim transcript or recording of their
- 22 bond hearing.
- 23 L. Preliminarily and permanently enjoin defendants from not providing Bond Hearing
- 24 Class members their bond hearing within 7 days of the asylum seeker’s request.

1 M. Preliminarily and permanently enjoin defendants from not providing Bond Hearing
2 Class members bond hearings where defendant DHS bears the burden of proof to
3 show continued detention is necessary.

4 N. Preliminarily and permanently enjoin defendants from not providing Bond
5 Hearing Class members where immigration judges make specific, particularized
6 written findings as to the basis for denying release from detention, including findings
7 identifying the basis for finding that the individual is a flight risk or a danger to the
8 community.

9 O. Order defendants to pay reasonable attorneys' fees and costs.

10 P. Order all other relief that is just and proper.

1
2
3 Dated this 15th day of July, 2018.
4

5 s/ Matt Adams

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26 *Application for *pro hac vice* admission
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5 s/ Thomas F. Ahearne

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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on July 15, 2018, I had the foregoing electronically filed with the
3 Clerk of the Court using the CM/ECF system, which will send notification of such filing to those
4 attorneys of record registered on the CM/ECF system. All other parties (if any) shall be served
5 in accordance with the Federal Rules of Civil Procedure.

6
7 DATED this 15th day of July, 2018.

8
9 *s/ Thomas F. Ahearne*
10 FOSTER PEPPER PLLC
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EXHIBIT B

The Honorable Marsha J. Pechman

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

~~YOLANY PADILLA, on behalf of herself and her 6 year old son J.A.; IBIS GUZMAN, on behalf of herself and her 5 year old son R.G.; -BLANCA ORANTES, on behalf of herself and her 8 year old son A.M.; -BALTAZAR VASQUEZ, on behalf of himself;~~

Plaintiffs-Petitioners.

V.

U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT (“ICE”); U.S. DEPARTMENT OF HOMELAND SECURITY (“DHS”); U.S. CUSTOMS AND BORDER PROTECTION (“CBP”); U.S. CITIZENSHIP AND IMMIGRATION SERVICES (“USCIS”); EXECUTIVE OFFICE FOR IMMIGRATION REVIEW (“EOIR”); ~~U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES (“HHS”); OFFICE OF REFUGEE RESETTLEMENT (“ORR”)~~; THOMAS HOMAN, Acting Director of ICE; KIRSTJEN NIELSEN, Secretary of DHS; KEVIN K. McALEENAN, Acting Commissioner of CBP; L. FRANCIS CISSNA, Director of USCIS; ~~ALEX M. AZAR II, Secretary of HHS; SCOTT LLOYD, Director of ORR~~; MARC J. MOORE, Seattle Field Office Director; ICE; JEFFERSON BEAUREGARD SESSIONS III, United States Attorney General; LOWELL CLARK, warden of the Northwest Detention Center in Tacoma, Washington; CHARLES INGRAM, warden of the Federal Detention Center in SeaTac, Washington; DAVID SHINN, warden of the Federal Correctional Institute in Victorville, California; JAMES JANECKA, warden of the Adelanto Detention Facility;

No. 2:18-cv-928 MJP

**SECOND AMENDED
COMPLAINT:
CLASS ACTION FOR
INJUNCTIVE AND
DECLARATORY RELIEF**

Defendants-Respondents.

I. INTRODUCTION

1. This lawsuit initially challenged~~s~~ the legality of the following three parts of the federal government's zero-tolerance policy with respect to persons fleeing for safety and asylum in the United States: (1) family separations, (2) credible fear interviews and determinations, and (3) the related bond hearings.

A. Family Separations

2. This lawsuit previously challenged~~s~~ the legality of the government's zero-tolerance practice of forcibly ripping children away from parents seeking asylum. The day after plaintiffs filed this suit in the Western District of Washington, however, a federal court in the Southern District of California issued a nationwide preliminary injunction Order against this forcible separation. (*Ms. L v. ICE*, -S.D.Cal. case no. 18cv0428 DMS (MDD), docket no. 83).

3. With this Second Amended Complaint, plaintiffs confirm that they ~~are not waiving their previously asserted claims for relief with respect to forcible separation, but~~ will not further pursue those claims in this case ~~pending defendants' promised compliance with the Ms. L v. ICE Order.~~

B. Credible Fear Interviews & Determinations

4. This lawsuit ~~also~~ challenges the legality of the government's policy or zero tolerance practice of excessively prolonging the detention of asylum seekers placed in expedited removal proceedings by failing to promptly provide them their credible fear interview and determination. Federal law requires that persons who have asked for asylum or expressed a fear of persecution must be scheduled for a "credible fear interview" with a DHS official to determine whether that person should be allowed to proceed with applying for asylum because he or she has a credible fear of persecution. If the interviewer determines the asylum seeker does have a credible fear of persecution, the government assigns the case to the federal immigration court for hearings to adjudicate the merits of that person's asylum claim. If the interviewer determines the asylum seeker does not have a credible fear of persecution, the asylum seeker can

1 appeal that determination to a federal immigration judge. But in either case, the federal
 2 government detains the asylum seeker until it determines that she or he has a credible fear of
 3 persecution. The *Ms. L v. ICE* Order did not address the federal government's lengthy delays in
 4 conducting these statutorily required credible fear interviews and or determinations.

5 ~~With this Second Amended Complaint, plaintiffs clarify and confirm their full
 6 pursuit of their claims with respect to defendants' excessively prolonging the detention of
 7 asylum seekers by failing to promptly provide the credible fear interviews and determinations
 8 required by federal law.~~

9 **D.C. Bond Hearings**

10 5. This lawsuit also challenges the legality of the government's related ~~policy or~~
 11 ~~zero tolerance~~ practice of excessively prolonging the detention of asylum seekers by failing to
 12 promptly conduct the bond hearings required by federal law after an asylum seeker's positive
 13 completion of their credible fear interview. Federal law requires that if an asylum seeker enters
 14 the United States at a location other than a designated "Port Of Entry" and is determined to have
 15 a credible fear of persecution in his or her credible fear interview, that asylum seeker is entitled
 16 to an individualized bond hearing before an immigration judge to determine reasonable
 17 conditions for that person's release from federal detention while he or she awaits the many
 18 months it takes to adjudicate his or her asylum claim (e.g., a reasonable bond amount or parole
 19 without posting a monetary bond). This bond hearing must comport with constitutional
 20 requirements. Yet the government does not establish any timeline for setting this hearing, and as
 21 a matter of practice, does not even audio record or provide a transcript of this hearing for appeal
 22 or appellate review (unlike other hearings in removal proceedings before the immigration judge).
 23 The government also places the burden on asylum seekers to demonstrate in the bond hearing
 24 that they should not continue to be detained throughout the lengthy immigration proceedings.
 25 When an immigration judge denies bond, the immigration judge routinely fails to even make
 26 specific findings but instead simply checks a box on a template order. The *Ms. L v. ICE* Order

1 did not address the federal government's failure to conduct prompt bond hearings that comport
 2 with constitutional requirements.

3 ~~1. With this Second Amended Complaint, plaintiffs specify their claims with respect~~
 4 ~~to defendants' excessively prolonging the detention of asylum seekers by failing to promptly~~
 5 ~~conduct the bond hearings required by federal law.~~

6 **F.D. United States Constitution**

7 6. The Bill of Rights prohibits the federal government from depriving any person of
 8 their liberty without due process of law (U.S. Constitution, 5th Amendment). ~~The Bill of Rights~~
 9 ~~also prohibits the federal government from imposing or inflicting on any person any excessive~~
 10 ~~bail or any cruel punishments. (U.S. Constitution, 8th Amendment).~~

11 7. Asylum seekers who cross the United States border are persons. They
 12 accordingly have a constitutionally protected liberty interest in (1) ~~remaining together as a~~
 13 ~~family, (2)~~ not being imprisoned for an unreasonable time awaiting their credible fear interview
 14 and determination, and (32) not being imprisoned without the opportunity for a prompt bond
 15 hearing that comports with constitutional requirements. And especially with respect to the
 16 federal government's avowed ~~zero-tolerance~~ policy or practice to deter criminal violations of
 17 federal immigration laws, asylum seekers also have a constitutionally protected interest in
 18 (34) not being subjected to prolonged imprisonment for deterrence or penalty reasons unrelated
 19 to adjudicating the merits of their individual asylum claim, ~~and (54) not being subjected to cruel~~
 20 ~~punishments though unreasonably delayed or denied bond or parole.~~

21 8. With this Second Amended Complaint, plaintiffs specify with more particularity
 22 how defendants' implementation of the federal government's ~~zero tolerance policy~~policies and
 23 practices with respect to persons fleeing for safety and seeking asylum in the United States
 24 violates the United States Constitution.

1 **G.E. Federal Law**

2 9. Federal law prohibits final agency action that is arbitrary, capricious, unlawfully
 3 withheld, or unreasonably delayed (e.g., Administrative Procedures Act, 5 U.S.C. §706). Federal
 4 law also grants persons fleeing persecution the right to apply for safety and asylum in the United
 5 States (e.g., 8 U.S.C. §§ 1225 & 1158; 8 C.F.R. §§ 235.3, 208.30, & 1003.42).

6 10. Federal law accordingly prohibits federal agencies from arbitrarily or capriciously
 7 depriving an asylum seeker of their child, their prompt credible fear interview and determination,
 8 or their prompt bond hearing. Federal law prohibits federal agencies from unlawfully
 9 withholding or unreasonably delaying an asylum seeker's reunification with their child, an
 10 asylum seeker's credible fear interview and determination, or an asylum seeker's bond hearing.
 11 And federal law prohibits federal agencies from impeding or seeking to deter an asylum seeker's
 12 legal right to apply for asylum.

13 11. With this Second Amended Complaint, plaintiffs specify with more particularity
 14 how defendants' implementation of the federal government's zero-tolerance policy policies and
 15 practices with respect to persons fleeing for safety and asylum in the United States violates
 16 federal law.

17 **H.F. Requested Relief**

18 12. With respect to (1) family separations, (2) credible fear interviews and
 19 determinations, and (32) the related bond hearings, plaintiffs request injunctive relief requiring
 20 defendants to cease their policies and practices implementing the federal government's zero-
 21 tolerance policy or practice in violation of the United States Constitution and federal law.
 22 Plaintiffs request declaratory relief to terminate the parties' disagreement with respect to whether
 23 (and how) defendants' implementation of the federal government's zero-tolerance policy policies
 24 or practices with respect to persons fleeing for safety and asylum in the United States violates the
 25 United States Constitution and federal law. Lastly, plaintiffs request whatever additional relief
 26 this Court finds warranted, just, or equitable.

II. JURISDICTION

13. This case arises under the Fifth ~~and Eighth~~ Amendments of the United States Constitution, the Administistrate Procedures Act (“APA”), and federal asylum statutes. This Court has jurisdiction under 28 U.S.C. § 1331 (federal question jurisdiction); 28 U.S.C. § 2241 (habeas jurisdiction); and Article I, § 9, clause 2 of the United States Constitution (“Suspension Clause”).

14. The original plaintiffs in this case were all in custody for purposes of habeas jurisdiction when this action was filed on June 25, 2018.

15. After this action was filed, plaintiffs Padilla, Orantes, and Guzman were eventually released from detention after they were eventually provided a credible fear interview and individualized bond hearings before an immigration judge. At the time this Second Amended Complaint is electronically filed on August 22~~July 15~~, 2018, plaintiffs Guzman, Orantes, and Vasquez is still in custody for purposes of habeas jurisdiction.

16. At the time this Second Amended Complaint is electronically filed on August 22~~July 15~~, 2018, all ~~but one of~~ the children that the federal government took away from plaintiffs have been returned to their mothers after roughly~~approximately two months of being separated~~are still in custody for purposes of habeas jurisdiction. (That one child, Yolany Padilla's 6 year old son, was finally returned to his mother yesterday, July 14, 2018.)

III. VENUE

17. Venue lies in this District under 28 U.S.C. § 1391 because a substantial portion of the relevant facts occurred within this District. Those facts include defendants' detention of plaintiffs Padilla, Guzman, and Orantes in this District while forcibly separated from their children, failure in this District to promptly conduct a credible fear interview and determination for their asylum claims, and failure in this District to promptly conduct bond hearings that comport with constitutional requirements to set reasonable conditions for release pending adjudication of their asylum claims.

IV. PARTIES

18. Plaintiff **Yolany Padilla** is a human being seeking asylum for herself and her 6-year-old son (J.A) in the United States. She is a citizen of Honduras.

19. Plaintiff **Ibis Guzman** is a human being seeking asylum for herself and her 5-year-old son (R.G.) in the United States. She is a citizen of Honduras.

20. Plaintiff **Blanca Orantes** is a human being seeking asylum for herself and her 8-year-old son (A.M.) in the United States. She is a citizen of El Salvador.

21. Plaintiff **Baltazar Vasquez** is a human being seeking asylum in the United States. He is a citizen of El Salvador.

22. Defendant U.S. Immigration and Customs Enforcement (“ICE”) is the federal government agency that carries out removal orders and oversees immigration detention. ICE is part of DHS. ICE’s responsibilities include determining whether an asylum seeker will be released and how soon his or her case will be submitted for a credible fear interview and subsequent proceedings on the merits before the immigration court. ICE’s local field office in Tukwila, Washington, is responsible for determining whether plaintiffs detained in Washington will be released, and how soon their cases will be submitted for credible fear interview and subsequent proceedings before the immigration court.

23. Defendant U.S. Department of Homeland Security (“DHS”) is the federal government agency that enforces immigration laws of the United States. DHS’s responsibilities include determining whether an asylum seeker will be released and how soon his or her case will be submitted for a credible fear interview and subsequent proceedings before the immigration court. DHS’s local field office in Tukwila, Washington, is responsible for determining whether plaintiffs detained in Washington will be released, and how soon their cases will be submitted for credible fear interview and subsequent proceedings before the immigration court.

24. Defendant U.S. Customs and Border Protection (“CBP”) is the federal government agency that conducts the initial processing and detention of asylum seekers crossing

1 the U.S. border. CBP is part of DHS. CBP's responsibilities include determining whether an
 2 asylum seeker will be released and how soon his or her case will be submitted for a credible fear
 3 interview and determination.

4 25. Defendant U.S. Citizenship and Immigration Services ("USCIS") is the federal
 5 government agency that, through its asylum officers, interviews asylum seekers to determine
 6 whether they should be assigned to the immigration court to be allowed to proceed with applying
 7 for asylum because they have a credible fear of persecution. USCIS is a part of DHS.

8 26. Defendant Executive Office for Immigration Review ("EOIR") is the federal
 9 government agency that is responsible for conducting immigration court proceedings, including
 10 adjudicating plaintiffs' asylum claims in removal proceedings and conducting individual bond
 11 hearings for persons in removal proceedings. EOIR is a part of the Department of Justice.

12 27. ~~Defendant U.S. Department of Health and Human Services ("HHS") is the federal~~
 13 ~~government agency that has been delegated authority to make custody determinations for~~
 14 ~~"unaccompanied" noncitizen children.~~

15 28. ~~27. Defendant Office of Refugee Resettlement ("ORR") is the federal government~~
 16 ~~agency that has been delegated responsibility to care for and place "unaccompanied"~~
 17 ~~noncitizen children. ORR is part of HHS.~~

18 29. ~~28. Defendant Thomas Homan is sued in his official capacity as the Director of ICE,~~
 19 ~~and is a legal custodian of plaintiff Vasquez and putative class members detained plaintiffs.~~

20 30. ~~29. Defendant Marc J. Moore is sued in his official capacity as the ICE Seattle Field~~
 21 ~~Office Director, and is a legal custodian of detained plaintiffs.~~

22 31. ~~30. Defendant Kirstjen Nielsen, is sued in her official capacity as the Secretary of~~
 23 DHS. In this capacity, she directs DHS, ICE, CBP, and USCIS. As a result, defendant Nielsen
 24 has responsibility for the administration of immigration laws pursuant to 8 U.S.C. §1103 and is a
 25 legal custodian of detained plaintiffs.

32-31. Defendant Kevin K. McAleenan is sued in his official capacity as the Commissioner of CBP.

33.32. Defendant L. Francis Cissna is sued in his official capacity as the Director of USCIS.

34. ~~Defendant Alex M. Azar II is sued in his official capacity as the Secretary of HHS.~~

35. Defendant Scott Lloyd is sued in his official capacity as the Director of ORR.

8 36.33. Defendant Jefferson Beauregard Sessions III is sued in his official capacity as the
9 United States Attorney General. In this capacity, he directs agencies within the United States
10 Department of Justice, including EOIR. Defendant Sessions has responsibility for the
11 administration of immigration laws pursuant to 8 U.S.C. §1103, oversees defendant EOIR, and is
12 empowered to grant asylum or other relief, including custody determinations made for persons in
13 removal proceedings.

37.34. Defendant Lowell Clark is sued in his official capacity as the warden of the Northwest Detention Center in Tacoma, Washington.

38.35. Defendant Charles Ingram is sued in his official capacity as the warden of the Federal Detention Center in SeaTac, Washington.

36. Defendant David Shinn is sued in his official capacity as the warden of the Federal Correctional Institute in Victorville, California.

39.37. Defendant James Janecka is sued in his official capacity as the warden of the Adelanto Detention Facility in Adelanto, California.

V. FACTS

A. Seeking Asylum

40.38. Federal law allows a person to seek asylum in the United States.

41.39. Plaintiffs are persons seeking asylum in the United States.

1 42. ~~Some asylum seekers cross the U.S. Mexico border at one of the “Ports Of Entry”~~
 2 ~~designated by the United States government.~~

3 43. ~~An asylum seeker who crosses the border at a designated Port Of Entry and~~
 4 ~~openly declares them self to a CBP agent is referred to as being an “arriving” asylum seeker.~~

5 44. ~~An asylum seeker who crosses the border at a Port Of Entry and does not openly~~
 6 ~~declares them self to a CBP agent is referred to as “entering without inspection.”~~

7 45. ~~An asylum seeker who crosses the U.S. Mexico border at a location that is~~
 8 ~~between the Ports Of Entry designated by the United States government is also referred to as~~
 9 ~~“entering without inspection.”~~

10 46.~~40.~~ Plaintiff **Yolany Padilla** and her 6-year-old son J.A. are asylum seekers who fled
 11 physical danger and persecution in Honduras.

12 47.~~41.~~ On or about May 18, 2018, plaintiff Yolany Padilla and her 6-year-old son J.A
 13 crossed the U.S.-Mexico border ~~at a location between Ports Of Entry designated by the United~~
 14 ~~States government.~~ They were arrested by a CBP agent as they were making their way to the
 15 closest Port Of Entry. She informed the CBP agent that they were seeking asylum.

16 48.~~42.~~ Plaintiff **Ibis Guzman** and her 5-year-old son R.G. are asylum seekers who fled
 17 physical danger and persecution in Honduras.

18 49.~~43.~~ On or about May 16, 2018, plaintiff Ibis Guzman and her 5-year-old son R.G.
 19 crossed the U.S.-Mexico border ~~at a location between Ports Of Entry designated by the United~~
 20 ~~States government.~~ They were arrested by a CBP agent. She informed the CBP agent that they
 21 were seeking asylum.

22 50.~~44.~~ Plaintiff **Blanca Orantes** and her 8-year-old son A.M. are asylum seekers who
 23 fled physical danger and persecution in El Salvador.

24 51.~~45.~~ On or about May 21, 2018, plaintiff Blanca Orantes and her 8-year-old son A.M.
 25 crossed the U.S.-Mexico border ~~at a location between Ports Of Entry designated by the United~~

1 ~~States government~~. They immediately walked to the CBP station to request asylum, and were
 2 arrested by a CBP agent. She informed the CBP agent that they were seeking asylum.

3 ~~52.46.~~ Plaintiff **Baltazar Vasquez** is an asylum seeker who fled physical danger and
 4 persecution in El Salvador.

5 ~~53.47.~~ On or about June 1, 2018, Baltazar Vasquez crossed the U.S.-Mexico border ~~at a~~
 6 ~~location between Ports Of Entry designated by the United States government~~. He was arrested
 7 by a CBP agent, and informed the CBP agent that he was seeking asylum.

8 **B. Defendants' Zero-Tolerance Policy or Practice**

9 ~~54.48.~~ Defendant ~~Attorney General~~ Sessions made an announcement about the federal
 10 government's "Zero-Tolerance Policy" on April 6, 2018, *See*
 11 <https://www.justice.gov/opa/pr/attorney-general-announces-zero-tolerance-policy-criminal-illegal-entry>.

13 ~~55.49.~~ The federal government's zero-tolerance policy was designed to be a coordinated
 14 effort to deter asylum seekers entering the country and exercising their right to apply for asylum
 15 by criminally prosecuting them, forcibly separating them from their children, and imposing
 16 prolonged, uncertain imprisonment (euphemistically called "detention") on them.

17 ~~56.50.~~ The federal government's zero-tolerance policy has been implemented against
 18 asylum seekers who enter the country without inspection requesting asylum.

19 ~~57.51.~~ The federal government's zero-tolerance policy has also been implemented
 20 against asylum seekers who appear at a Port Of Entry to request asylum.

21 **C. Promptly Taking Children Away From Parents Seeking Asylum**

22 ~~58.52.~~ One part of the federal government's zero-tolerance policy ~~or practice is was~~ to
 23 promptly take children away from parents seeking asylum in the United States.

24 ~~59.53.~~ The federal government ~~would~~ sends the parent and child to separate federal
 25 detention facilities – often in different states thousands of miles away from each other.

1 60.54. A child's forced separation from a parent causes the child severe trauma. This
 2 damage is even worse for children who are already traumatized from fleeing danger and
 3 persecution in their home country. The cognitive and emotional damage caused by a child's
 4 forced separation from a parent can be permanent.

5 61.55. A parent's forced separation from their child is also deeply damaging to the
 6 parent. This damage is even worse for parents who are already traumatized from fleeing danger
 7 and persecution in their home country, are given little to no information regarding the well-being
 8 or whereabouts of their child, and fear they may never see their child again.

9 62.56. The federal government promptly ~~took~~ children away from parents seeking
 10 asylum in the United States without any demonstration in a hearing that that parent is unfit or
 11 presents any danger to the child.

12 63.57. The federal government promptly ~~took~~ children away from parents seeking
 13 asylum in the United States without any evidence or accusation that the parent seeking asylum is
 14 an unfit parent, or presents a danger to the child, or is not acting in the child's best interest, or is
 15 a threat to the child's safety, or abused the child, or neglected the child.

16 64.58. The federal government promptly ~~took~~ children away from parents seeking
 17 asylum in the United States to penalize and deter persons from seeking asylum.

18 65.59. The federal government promptly ~~took~~ children away from parents seeking
 19 asylum in the United States as part of its zero-tolerance policy against criminal violations of
 20 federal immigration laws.

21 66.60. Plaintiffs Yolany Padilla, Ibis Guzman, and Blanca Orantes are parents who
 22 sought asylum and were (1) detained in immigration custody by defendants in Washington State
 23 and (2) separated from a minor child by defendants without any demonstration in a hearing that
 24 that parent is unfit or presents a danger to the child.

25 67.61. When plaintiff **Yolany Padilla** and her 6-year-old son J.A were taken into
 26 custody, a federal agent promptly announced that Yolany Padilla's son would be taken away

1 from her. Her 6-year-old son clutched his mother's shirt and said, "no, mommy, I don't want to
 2 go." She reassured her son that any separation would be short, and that everything would be
 3 okay. She was able to stay with her son as they were transferred to one of the federal detention
 4 buildings that detainees commonly refer to as "the hielera" ("the freezer") because of its cold
 5 temperatures. Once they arrived, Yolany Padilla's 6-year-old son was forcibly taken away from
 6 her without explanation.

7 68.62. Yolany Padilla's 6-year-old son was taken away from her without any hearing,
 8 and without any accusation or evidence that she is in any way an unfit parent, or that she is in
 9 any way not acting in his best interest fleeing for safety in the United States, or that she is in any
 10 way a threat to his safety, or that she in any way abused him, or that she in any way neglected
 11 him.

12 69.63. Yolany Padilla was then transferred to another federal facility in Laredo, Texas
 13 about three days later. The federal officers in that facility took her son's birth certificate from
 14 her. When she asked for it back, she was told the immigration authorities had it. No one has
 15 returned her son's birth certificate to her.

16 70.64. About twelve days later, Yolany Padilla was transferred to the Federal Detention
 17 Center in SeaTac, Washington.

18 71.65. Despite repeated inquiries into her son's whereabouts, Yolany Padilla was not
 19 provided any information about her son until about a month into her detention, when the
 20 Honduran consul visited the detention center and she explained she had no news of her son.
 21 Soon thereafter she was given a piece of paper saying her son had been put in a place called
 22 "Cayuga Center" in New York. That piece of paper also had a phone number, but she was not
 23 able to call her son that day because she did not have money to make a long distance phone call.

24 72.66. The next day, someone gave Yolany Padilla the opportunity to call her son for
 25 about ten minutes. Her 6-year-old son mostly cried quietly.

1 73.67. Yolany Padilla was not released from federal imprisonment until July 6, 2018,
 2 after an immigration judge finally granted her a bond.

3 74.68. Yolany Padilla's 6-year-old son was not released from federal imprisonment until
 4 July 14, 2018. That was almost two months after the federal government forcibly took him away
 5 from his mom.

6 75.69. CBP transported plaintiff **Ibis Guzman** and her 5-year-old son R.G. to one of the
 7 federal detention buildings in Texas that detainees commonly refer to as "the hielera" ("the
 8 freezer") because of its cold temperatures. One CBP agent questioned Ibis Guzman, and
 9 another CBP agent forcibly took her son away stating she would see her son again in three days.

10 76.70. Ibis Guzman's 5-year-old son was taken away from her without any hearing, and
 11 without any accusation or evidence that she is in any way an unfit parent, or that she is in any
 12 way not acting in his best interest fleeing for safety in the United States, or that she is in any way
 13 a threat to his safety, or that she in any way abused him, or that she in any way neglected him.

14 77.71. After three days, Ibis Guzman was transferred to a different CBP facility in
 15 Texas. When she asked the federal agents there about the reunification with her son that the
 16 CBP agent had promised, they told her they did not know anything about her son's whereabouts.

17 78.72. Ibis Guzman was then transferred to another federal facility in Laredo, Texas,
 18 where she was detained without any knowledge of the whereabouts of her 5-year-old son and
 19 without any means to contact him. She did not receive any information about him during this
 20 time, despite her repeated attempts to obtain such information.

21 79.73. About two weeks later, Ibis Guzman was transferred to the Federal Detention
 22 Center in SeaTac, Washington.

23 80.74. Ibis Guzman was not provided any information about her 5-year-old son until
 24 about a week later, when she was told that her son had been given to a place called "Baptist
 25 Child and Family Services" in San Antonio, Texas. But she was still not able to contact him.

1 75. On June 20, 2018, Ibis Guzman was transferred to the Northwest Detention
 2 Center in Tacoma, Washington, ~~where she continues to be held, separated from her 5-year-old~~
 3 ~~son.~~

4 76. Ibis Guzman was denied bond by the immigration judge at her bond hearing on
 5 July 3, 2018.

6 81.77. She was not released until on or about July 31, 2018, after the federal government
 7 was forced in order to comply with the preliminary injunction in *Ms. L.*, and thereafter reunited
 8 with her child.

9 82.78. CBP transported plaintiff **Blanca Orantes** and her 8-year-old son A.M. to a
 10 federal detention facility in Texas. CBP agents led Blanca Orantes into one of the federal
 11 detention buildings that detainees commonly refer to as “the hielera” (“the freezer”) because of
 12 its cold temperatures, and took her 8-year-old son to another part of that detention facility.

13 83.79. While a CBP agent was later interviewing Blanca Orantes, another agent brought
 14 her 8-year-old son to her and told her to “say goodbye” to him because they were being
 15 separated. Her 8-year-old son began crying and pleading for his mom not to leave him. ~~She has~~
 16 ~~not seen her son since then.~~

17 84.80. Blanca Orantes’ 8-year-old son was taken away from her without any hearing,
 18 and without any accusation or evidence that she is in any way an unfit parent, or that she is in
 19 any way not acting in his best interest fleeing for safety in the United States, or that she is in any
 20 way a threat to his safety, or that she in any way abused him, or that she in any way neglected
 21 him.

22 85.81. On or around May 24, 2018, Blanca Orantes was handcuffed and taken to court.
 23 She pled guilty to improper entry under 8 U.S.C. §1325 and was sentenced to time served. She
 24 was then returned to her cell.

25 86.82. About nine days later, Blanca Orantes was transported to the Federal Detention
 26 Center in SeaTac, Washington.

1 87.83. The federal government did not provide Blanca Orantes any information about
 2 her 8-year-old son until June 9, 2018, when an ICE officer handed her a slip of paper saying her
 3 son was being held at place called “Children’s Home of Kingston” in Kingston, New York.

4 84. On June 20, 2018, Blanca Orantes was transferred to the Northwest Detention
 5 Center in Tacoma, Washington, where she was finally allowed to speak to her 8-year-old son by
 6 telephone. ~~To date, she has not been allowed to see her 8 year old son, and has rarely been~~
 7 ~~allowed to speak to him by phone.~~

8 85. Blanca Orantes was denied bond by the immigration judge at her bond hearing on
 9 July 16, 2018.

10 88.86. She was not released until on or about July 24, 2018, in order to comply with the
 11 preliminary injunction in Ms. L., and thereafter reunited with her child.

12 **D. Failing To Promptly Provide The Credible Fear Interview & Determination
 13 Required By Federal Law**

14 89.87. One part of the federal government’s ~~zero-tolerance~~ policy or practice is to keep
 15 asylum seekers in limbo in federal detention by delaying the threshold credible fear interview to
 16 which asylum seekers are entitled under federal law.

17 90.88. Detained asylum seekers who are subject to expedited removal are not permitted
 18 to move forward with their asylum claims until a credible fear determination has been made by a
 19 DHS official.

20 91.89. The federal government keeps asylum seekers in limbo in federal detention by
 21 delaying their credible fear interview in part to penalize and deter persons from seeking asylum.

22 92.90. The federal government keeps asylum seekers in limbo in federal detention by
 23 delaying their credible fear interview ~~as part of its zero-tolerance policy against criminal~~
 24 ~~violations of federal immigration laws.~~

25 93.91. The federal government has not established any procedural timeframes for
 26 providing asylum seekers the credible fear interview and determinations required by federal law.

1 94.92. Plaintiffs Yolany Padilla, Ibis Guzman, Blanca Orantes, and Baltazar Vasquez are
 2 detained asylum seekers subject to expedited removal proceedings under 8 U.S.C. § 1225(b) who
 3 were not provided a credible fear interview and determination within 10 days of requesting
 4 asylum or expressing a fear of persecution to a DHS official.

5 95.93. When plaintiff **Yolany Padilla** first spoke with the CBP agent on or about
 6 May 18, 2018, she told the CBP agent that she and her son were requesting asylum.

7 96.94. Neither Yolany Padilla nor her son were provided a credible fear interview within
 8 10 days of requesting asylum or expressing a fear of persecution to a DHS official.

9 97.95. Neither Yolany Padilla nor her son were provided a credible fear interview as of
 10 the date this lawsuit was originally filed on June 25, 2018.

11 98.96. Instead, Yolany Padilla was not provided her credible fear interview until July 2,
 12 2018. That was more than a month after federal officials imprisoned her. The DHS official
 13 conducting her credible fear interview determined that Yolany Padilla does have a credible fear
 14 of persecution, and therefore- assigned her asylum claim to immigration court for adjudication on
 15 the merits

16 99.97. When plaintiff **Ibis Guzman** first spoke with the CBP agent on or about May 16,
 17 2018, she told the CBP agent that she and her son were requesting asylum.

18 100.98. Neither Ibis Guzman nor her son were provided a credible fear interview
 19 within 10 days of requesting asylum or expressing a fear of persecution to a DHS official.

20 101.99. Neither Ibis Guzman nor her son were provided a credible fear interview
 21 as of the date this lawsuit was originally filed on June 25, 2018.

22 102.100. Instead, Ibis Guzman was not provided her credible fear interview until
 23 June 27, 2018. That was more than a month after federal officials imprisoned her. The DHS
 24 official conducting her credible fear interview determined that Ibis Guzman does have a credible
 25 fear of persecution, and therefore assigned her asylum claim to immigration court for
 26 adjudication on the merits.

1 103-101. When plaintiff **Blanca Orantes** first spoke with the CBP agent on or
 2 about May 21, 2018, she told the CBP agent that she and her son were requesting asylum.

3 104-102. Neither Blanca Orantes nor her son were provided a credible fear
 4 interview within 10 days of requesting asylum or expressing a fear of persecution to a DHS
 5 official.

6 105-103. Neither Blanca Orantes nor her son were provided a credible fear
 7 interview as of the date this lawsuit was originally filed on June 25, 2018.

8 106-104. Instead, Blanca Orantes was not provided her credible fear interview until
 9 June 27, 2018. That was more than a month after federal officials imprisoned her. The DHS
 10 official conducting her credible fear interview determined that Blanca Orantes does have a
 11 credible fear of persecution, and therefore assigned her asylum claim to immigration court for
 12 adjudication on the merits.

13 107-105. When plaintiff **Baltazar Vasquez** first spoke with the CBP agent on or
 14 about June 1, 2018, he told the CBP agent that he was requesting asylum.

15 108-106. Baltazar Vasquez was not provided a credible fear interview within
 16 10 days of requesting asylum or expressing a fear of persecution to a DHS official.

17 109-107. Baltazar Vasquez was not provided a credible fear interview as of the date
 18 this lawsuit was originally filed on June 25, 2018.

19 110-108. Baltazar Vasquez was not scheduled for-provided a credible fear interview
 20 until after as of the date the is First Amended Complaint wa is electronically filed on July 15,
 21 2018.

22 111-109. Baltazar Vasquez was not provided his credible fear interview until July
 23 31, 2018. That was almost two months after federal officials imprisoned him.- The DHS official
 24 conducting his credible fear interview determined that Baltazar Vasquez does have a credible
 25 fear of persecution, and therefore referred his case assigned his asylum claim to an immigration
 26 court for adjudication on of the merits of his asylum claim.

1 112-110. Baltazar Vasquez is currently imprisoned at the Adelanto Detention
 2 facility in the Bureau of Prison's Federal Correctional Institute in AdelantoVictorville,
 3 California.

4 **E. Failing To Promptly Provide The Bond Hearing Required By Federal Law**

5 113-111. One part of the federal government's zero-tolerance policy or practice is to
 6 prolong imprisonment without a proper bond hearing for asylum seekers who entered the United
 7 States without inspection.

8 114-112. The federal government keeps asylum seekers in limbo in federal
 9 detention by delaying their bond hearing in part to penalize and deter persons from seeking
 10 asylum.

11 115-113. The federal government keeps asylum seekers in limbo in federal
 12 detention by delaying their bond hearing as part of its zero tolerance policy against criminal
 13 violations of federal immigration laws.

14 116-114. The federal government has not established any procedural timeframes for
 15 timely providing the bond hearings required by federal law. The federal government has not
 16 established basic procedural safeguards for bond hearings such as verbatim transcripts or audio
 17 recordings of bond hearings. The absence of such basic safeguards impedes an imprisoned
 18 asylum seeker's ability to meaningful appeal the denial of bond in their individual case as not
 19 being based on evidence of legally relevant factors (i.e., their being a flight risk or danger to the
 20 community) instead of legally irrelevant factors (e.g., the zero-tolerance policy's general goal of
 21 punishing and deterring asylum seekers). Defendant EOIR maintains audio recordings of
 22 proceedings before an Immigration Judge other than bond hearings, and provides verbatim
 23 transcripts on appeals to the Board of Immigration Appeals. But Defendant EOIRs does not
 24 maintain audio recordings of an asylum seeker's bond hearing or provide verbatim transcripts for
 25 appeal of bond hearing determinations. Indeed, when an immigration judge denies bond, they
 26 routinely do not even make specific, particularized findings, and instead simply checking a box

1 on a template order. Moreover, Defendants place the burden of proof on the
 2 immigrant noncitizen to demonstrate that they should not continue to be detained throughout their
 3 lengthy immigration proceedings.

4 117-115. Plaintiff **Yolany Padilla** is an asylum seeker who originally entered the
 5 United States without inspection, was initially subject to expedited removal proceedings under
 6 8 U.S.C. §1225(b) and detained, was determined to have a credible fear of persecution, but was
 7 not provided a timely bond hearing with a verbatim transcript or audio recording.

8 118-116. The federal government did not provide Yolany Padilla a bond hearing
 9 until after she filed this lawsuit. At the conclusion of that bond hearing, an order was issued
 10 allowing her to be released from federal detention upon posting an \$8,000~~on~~ bond pending the
 11 adjudication of her asylum claim on the merits. To her knowledge, there is no verbatim
 12 transcript or recording of her bond hearing. At the bond hearing, the immigration judge placed
 13 the burden of proof on Yolany Padilla to demonstrate that she was qualified for a bond.

14 119-117. Plaintiffs **Ibis Guzman** is a detained asylum seeker who originally entered
 15 the United States without inspection, was initially subject to expedited removal proceedings
 16 under 8 U.S.C. §1225(b), was determined to have a credible fear of persecution, but was not
 17 provided a timely bond hearing with a verbatim transcript or audio recording.

18 120-118. The federal government did not provide Ibis Guzman a bond hearing until
 19 after she filed this lawsuit. At the bond hearing, the immigration judge placed the burden of
 20 proof on Ibis Guzman to demonstrate that she qualified for a bond. At the conclusion of that
 21 bond hearing, an immigration judge issued an order denying her release on *any* bond amount
 22 pending the adjudication of her asylum claim on the merits.

23 121-119. The immigration judge did not make specific, particularized findings for
 24 the basis of the denial. The immigration judge circled the preprinted words “Flight Risk” on a
 25 form order, rendering her ineligible for bond even though a DHS official had already determined
 26

1 she has a credible fear of persecution and even though the federal government has taken away
 2 her 6-year-old son.

3 ~~122.~~—The immigration judge provided no written explanation for circling “Flight Risk”
 4 or the factors and evidence considered in making that conclusion to deny bond. Per defendant
 5 EOIR’s practice, there is no verbatim transcript or recording of her bond hearing. [At the bond](#)
 6 [hearing, the immigration judge placed the burden on Ibis Guzman to demonstrate that she was](#)
 7 [qualified for a bond.](#)

8 ~~123.~~—[At the time this Amended Complaint is electronically filed on July 15, 2018, Ibis](#)
 9 [Guzman is still imprisoned in federal detention.](#)

10 [120.](#) [She was not released until on or about July 31, 2018, in order to comply with the](#)
 11 [preliminary injunction in *Ms. L.L.*](#)

12 ~~124.~~[121.](#) Plaintiff **Blanca Orantes** is a detained asylum seeker who originally
 13 entered the United States without inspection, was initially subject to expedited removal
 14 proceedings under 8 U.S.C. §1225(b), was determined to have a credible fear of persecution once
 15 she was eventually provided her credible fear interview and determination, but was not provided
 16 a bond hearing with a verbatim transcript or recording of the hearing within 7 days of requesting
 17 a bond hearing.

18 ~~122.~~ [Blanca Orantes ~~was not~~ ~~has now been told~~ ~~she will be~~ provided a bond hearing](#)
 19 [until](#)~~on~~ [July 16, 2018. At the bond hearing, the immigration judge placed the burden of proof on](#)
 20 [Blanca Orantes to demonstrate that she qualified for a bond. At the conclusion of that bond](#)
 21 [hearing, an immigration judge issued an order denying her release on *any* bond amount pending](#)
 22 [the adjudication of her asylum claim on the merits.](#)

23 [123.](#) [The immigration judge did not make specific, particularized findings for the basis](#)
 24 [of the denial, and even failed to check the box indicating why she was denied bond on the](#)
 25 [template order. Per defendant EOIR’s practice, there is no verbatim transcript or recording of her](#)

1 bond hearing. At the bond hearing the immigration judge placed the burden on Blanca Orantes
2 to demonstrate that she was qualified for a bond.

3 124. She was not released until on or about July 23, 2018, after the federal government
4 was forced in order to comply with the preliminary injunction in *Ms. L.*, and thereafter reunited
5 her with her child.

6 125. She accordingly still has not been provided a bond hearing with a verbatim
7 transcript or recording of the hearing.

8 125. Plaintiff **Baltazar Vasquez** is a detained asylum seeker who originally entered
9 the United States without inspection (thus initially triggering potential expedited removal
10 proceedings under 8 U.S.C. §1225(b)), was initially subject to expedited removal proceedings
11 under 8 U.S.C. §1225(b), was determined to have a credible fear of persecution once he was
12 eventually provided his credible fear interview and determination, but was not provided a bond
13 hearing with a verbatim transcript or recording of the hearing within 7 days of requesting a bond
14 hearing, but as of the time this Amended Complaint is electronically filed still has not been
15 provided his credible fear interview and determination, and accordingly still has not been
16 provided a bond hearing with a verbatim transcript or recording of the hearing.

17 126. The federal government did not provide Baltazar Vasquez a bond hearing until
18 August 20, 2018. At the bond hearing, the immigration judge placed the burden of proof on
19 Baltazar Vasquez to demonstrate that he qualified for a bond. At the conclusion of that bond
20 hearing, an order was issued allowing him to be released from federal detention upon posting a
21 \$9,000 bond pending the adjudication of his asylum claim on the merits. There is no verbatim
22 transcript or recording of his bond hearing.

23 **VI. CLASS ALLEGATIONS**

24 127. The named plaintiffs are asylum seekers who filed this suit on behalf of
25 themselves and their family members being detained in federal detention.

1 128. The named plaintiffs also bring this suit as a class action under Fed.R.Civ.P. 23(b)
 2 on behalf of the other similarly situated persons specified in the ~~two~~~~three~~ classes of asylum
 3 seekers specified in Part VI of this Second Amended Complaint.

4 . “Family Separation Class”

5 130. ~~As previously noted, plaintiffs will not be currently pursuing their~~
 6 ~~family separation claim in this case pending defendants’ promised~~
 7 ~~compliance with the *Ms. L v. ICE* Order noted in paragraph 2 of this~~
 8 ~~Amended Complaint. This Amended Complaint nonetheless identifies the~~
 9 ~~following class in case defendants’ obligations are modified in that Order~~
 10 ~~or their compliance falls short.~~

11 131. ~~With respect to plaintiffs’ claims concerning the legality of the~~
 12 ~~government’s practice of taking children away from parents seeking~~
 13 ~~asylum, plaintiffs seek to represent the following class (the “family~~
 14 ~~separation class”):~~

15 — ~~All parents who sought asylum and were (1) detained in immigration~~
 16 ~~custody by defendants in Washington State and (2) separated from a minor~~
 17 ~~child by defendants absent a demonstration in a hearing that that parent is~~
 18 ~~unfit or presents a danger to the child.~~

19 133. ~~Plaintiffs allege the following on information and belief. At least~~
 20 ~~fifty parents currently fit within the family separation class. Defendants~~
 21 ~~should know the precise number since the members of this class should be~~
 22 ~~readily ascertainable through defendants’ records.~~

23 134. ~~The family separation class satisfies Rule 23(a)(1). This class is~~
 24 ~~so numerous that joinder of all class members is impracticable.~~

25 135. ~~The family separation class satisfies Rule 23(a)(2). There are~~
 26 ~~questions of law or fact common to this class. Given the definition of this~~

1 class, its members all share the same common factual situation of being
 2 subject to defendants' practice of separating asylum seeking parents from
 3 their minor child absent a demonstration in a hearing that that parent is
 4 unfit or presents a danger to their child. The members of this class share
 5 common questions of law governing whether defendants' practice of
 6 taking children away from class members seeking asylum is legal under
 7 the Fifth Amendment, Eighth Amendment, APA, or federal asylum
 8 statutes.

9 136. The ~~family separation class~~ satisfies Rule 23(a)(3). The claims of
 10 plaintiffs Padilla, Guzman, and Orantes concerning the legality of
 11 defendants' practice of taking children away from parents seeking asylum
 12 are typical of the claims of class members. As noted in the prior
 13 paragraph, the definition of this class dictates that plaintiffs Padilla,
 14 Guzman, and Orantes share with the other class members the same
 15 common factual situation and the same common questions of law under
 16 the Fifth Amendment, Eighth Amendment, APA, and federal asylum
 17 statutes.

18 137. The ~~family separation class~~ satisfies Rule 23(a)(4). Plaintiffs
 19 Padilla, Guzman, and Orantes will fairly and adequately protect the
 20 interests of that class. They are represented by counsel from the
 21 Northwest Immigrant Rights Project, who have extensive experience
 22 litigating class action lawsuits and other complex cases in federal court,
 23 including civil rights lawsuits on behalf of noncitizens. They are also
 24 represented by counsel from the Foster Pepper law firm, who have
 25 extensive experience litigating constitutional and statutory rights lawsuits

in the federal and state courts, including civil rights lawsuits on behalf of a variety of plaintiffs.

138. The **family separation class** satisfies Rule 23(b)(1). Requiring separate actions by the members of this class would create the risk of inconsistent or varying adjudications with respect to individual class members that would establish incompatible standards of conduct for defendants. Requiring separate actions by the members of this class would create the risk of adjudications with respect to individual class members that, as a practical matter, would be dispositive of the interests of the other class members not parties to the individual adjudications, or would at least substantially impair or impede their ability to protect their interests.

139. The **family separation class** satisfies Rule 23(b)(2). Defendants
have acted or refused to act on grounds that apply generally to this class.
Final injunctive relief or corresponding declaratory relief is appropriate
with respect to the class as a whole because requiring separate actions by
the members of this class would create the risk of inconsistent or varying
adjudications with respect to individual class members that would
establish incompatible standards of conduct for defendants.

140.128. The family separation class satisfies Rule 23(b)(3). Questions of law or fact common to members of this class predominate over questions affecting only individual members. A class action is superior to other available methods for fairly and efficiently adjudicating the legality of defendants' practice of taking children away from parents seeking asylum as part of their implementation of the government's zero tolerance policy.

1 **F. A. "Credible Fear Interview Class"**

2 141-129. With respect to plaintiffs' claims concerning defendants' failure to
 3 promptly provide asylum seekers a credible fear interview and determination, plaintiffs seek to
 4 represent the following class (the "**credible fear interview class**"):

5 All detained asylum seekers in the United States subject to expedited removal proceedings
 6 under 8 U.S.C. §1225(b) who are not provided a credible fear determination within 10 days
 7 of requesting asylum or expressing a fear of persecution to a DHS official, absent a request
by the asylum seeker for a delayed credible fear interview.

8 142-130. Plaintiffs allege the following on information and belief: At least several
 9 hundred asylum seekers currently fit within the **credible fear interview class**. Defendants
 10 should know the precise number since the members of this class should be readily ascertainable
 11 through defendants' records.

12 143-131. The **credible fear interview class** satisfies Rule 23(a)(1). This class is so
 13 numerous that joinder of all class members is impracticable.

14 144-132. The **credible fear interview class** satisfies Rule 23(a)(2). There are
 15 questions of law or fact common to this class. Given the definition of this class, its members all
 16 share the same common factual situation of being a detained asylum seeker subject to
 17 defendants' practice of failing to provide a credible fear interview and determination within
 18 10 days of their expressing a fear of persecution or a request for asylum to a DHS official,
 19 despite the fact they have been placed in expedited removal proceedings under 8 USC § 1225(b),
 20 which requires immediate action. The members of this class share common questions of law
 21 governing whether defendants' practice of failing to provide class members a credible fear
 22 interview and determination within 10 days of their expressing a fear of persecution or a request
 23 for asylum to a DHS official is legal under the Fifth Amendment, Eighth Amendment, APA, or
 24 federal asylum statutes.

25 145-133. The **credible fear interview class** satisfies Rule 23(a)(3). Plaintiffs'
 26 claims concerning the legality of defendants' practice of failing to provide a credible fear

1 interview and determination within 10 days of their expressing a fear of persecution or a request
 2 for asylum to a DHS official are typical of the claims of class members. As noted in the prior
 3 paragraph, the definition of this class dictates that plaintiffs share with the other class members
 4 the same common factual situation and the same common questions of law under the Fifth
 5 Amendment, ~~Eighth Amendment~~, APA, and federal asylum statutes.

6 ~~146.134.~~ The **credible fear interview class** satisfies Rule 23(a)(4). Plaintiffs will
 7 fairly and adequately protect the interests of that class. They are represented by counsel from the
 8 Northwest Immigrant Rights Project and the American Immigration Council, who have extensive
 9 experience litigating class action lawsuits and other complex cases in federal court, including
 10 civil rights lawsuits on behalf of noncitizens. ~~They are also represented by counsel from the
 11 Foster Pepper law firm, who have extensive experience litigating constitutional and statutory
 12 rights lawsuits in the federal and state courts, including civil rights lawsuits on behalf of a variety
 13 of plaintiffs.~~

14 ~~147.135.~~ The **credible fear interview class** satisfies Rule 23(b)(1). Requiring
 15 separate actions by the members of this class would create the risk of inconsistent or varying
 16 adjudications with respect to individual class members that would establish incompatible
 17 standards of conduct for defendants. Requiring separate actions by the members of this class
 18 would create the risk of adjudications with respect to individual class members that, as a
 19 practical matter, would be dispositive of the interests of the other class members not parties to
 20 the individual adjudications, or would at least substantially impair or impede their ability to
 21 protect their interests.

22 ~~148.136.~~ The **credible fear interview class** satisfies Rule 23(b)(2). Defendants
 23 have acted or refused to act on grounds that apply generally to this class. Final injunctive relief
 24 or corresponding declaratory relief is appropriate with respect to the class as a whole, especially
 25 as it involves uniform, federal immigration law and plaintiffs are transferred across the country
 26 by defendants. Moreover, requiring separate actions by the members of this class would create

1 the risk of inconsistent or varying adjudications with respect to individual class members that
 2 would establish incompatible standards of conduct for defendants.

3 149-137. The **credible fear interview class** satisfies Rule 23(b)(3). Questions of
 4 law or fact common to members of this class predominate over questions affecting only
 5 individual members. A class action is superior to other available methods for fairly and
 6 efficiently adjudicating the legality of defendants' practice of failing to provide a credible fear
 7 interview and determination within 10 days of a person's expressing a fear of persecution or
 8 requesting asylum.

9 **B. "Bond Hearing Class"**

10 150-138. With respect to plaintiffs' claims concerning defendants' failure to
 11 promptly conduct a bond hearing to set reasonable conditions for the asylum seeker's release
 12 pending the lengthy proceedings to adjudicate his or her asylum claim, and to provide a bond
 13 hearing that comports with the requirements of due process, plaintiffs seek to represent the
 14 following class (the "**bond hearing class**"):

15 All detained asylum seekers who entered the United States without inspection, who were
 16 initially subject to expedited removal proceedings under 8 U.S.C. §1225(b), who were
 17 determined to have a credible fear of persecution, but who are not provided a bond hearing
 18 with a verbatim transcript or recording of the hearing within 7 days of requesting a bond
 19 hearing.

20 151-139. Plaintiffs allege the following on information and belief: At least several
 21 hundred asylum seekers currently fit within the **bond hearing class**. Defendants should know
 22 the precise number since the members of this class should be readily ascertainable through
 23 defendants' records.

24 152-140. The **bond hearing class** satisfies Rule 23(a)(1). This class is so numerous
 25 that joinder of all class members is impracticable.

26 153-141. The **bond hearing class** satisfies Rule 23(a)(2). There are questions of
 27 law or fact common to this class. Given the definition of this class, its members all share the

1 same common factual situation of being asylum seekers who entered the United States without
 2 inspection, were initially subject to expedited removal proceedings, were found to have a
 3 credible fear of persecution, but were then subject to defendants' practice of failing to provide a
 4 bond hearing with a transcript or recording of the hearing within 7 days of their requesting a
 5 bond hearing. Moreover, defendant EOIR placed the burden on class members to demonstrate in
 6 bond hearings that plaintiffs are eligible for release, and defendants EOIR failed to make any
 7 specific, particularized findings of fact when denying bond release. The members of this class
 8 share common questions of law governing whether defendants' practice of failing to provide a
 9 bond hearing with a transcript or recording of the proceeding within 7 days of their requesting a
 10 bond hearing. and Defendant EOIR's practice of placing the burden of proof on the detained
 11 asylum seeker to demonstrate their eligibility for release-, and Defendant EOIR's failure to make
 12 specific, particularized findings when denying release, - is legal under the Fifth Amendment,
 13 Eighth Amendment, APA, or federal asylum statutes.

14 154-142. The **bond hearing class** satisfies Rule 23(a)(3). Plaintiffs' claims
 15 concerning the legality of defendants' practice of failing to provide a bond hearing with a
 16 transcript or recording of the proceeding within 7 days of an asylum seeker's requesting a bond
 17 hearing hearing, and Defendant EOIR's practice of placing the burden of proof on the detained
 18 asylum seeker to demonstrate they are eligible for release should be granted a bond, and
 19 Defendant EOIR's failure to make specific findings when denying a bond release, are typical of
 20 the claims of class members. As noted in the prior paragraph, the definition of this class dictates
 21 that plaintiffs share with the other class members the same common factual situation and the
 22 same common questions of law under the Fifth Amendment, Eighth Amendment, APA, and
 23 federal asylum statutes.

24 155-143. The **bond hearing class** satisfies Rule 23(a)(4). Plaintiffs will fairly and
 25 adequately protect the interests of that class. They are represented by counsel from the
 26 Northwest Immigrant Rights Project and the American Immigration Council, who have extensive

1 experience litigating class action lawsuits and other complex cases in federal court, including
 2 civil rights lawsuits on behalf of noncitizens. ~~They are also represented by counsel from the
 3 Foster Pepper law firm, who have extensive experience litigating constitutional and statutory
 4 rights lawsuits in the federal and state courts, including civil rights lawsuits on behalf of a variety
 5 of plaintiffs.~~

6 ~~156.144.~~ The **bond hearing class** satisfies Rule 23(b)(1). Requiring separate
 7 actions by the members of this class would create the risk of inconsistent or varying
 8 adjudications with respect to individual class members that would establish incompatible
 9 standards of conduct for defendants. Requiring separate actions by the members of this class
 10 would create the risk of adjudications with respect to individual class members that, as a
 11 practical matter, would be dispositive of the interests of the other class members not parties to
 12 the individual adjudications, or would at least substantially impair or impede their ability to
 13 protect their interests.

14 ~~157.145.~~ The **bond hearing class** satisfies Rule 23(b)(2). Defendants have acted or
 15 refused to act on grounds that apply generally to this class. Final injunctive relief or
 16 corresponding declaratory relief is appropriate with respect to the class as a whole especially as it
 17 involves uniform, federal immigration law and plaintiffs are transferred across the country by
 18 defendants. Moreover, requiring separate actions by the members of this class would create the
 19 risk of inconsistent or varying adjudications with respect to individual class members that would
 20 establish incompatible standards of conduct for defendants.

21 ~~158.146.~~ The **bond hearing class** satisfies Rule 23(b)(3). Questions of law or fact
 22 common to members of this class predominate over questions affecting only individual
 23 members. A class action is superior to other available methods for fairly and efficiently
 24 adjudicating the legality of defendants' practice of failing to provide a bond hearing with a
 25 transcript or recording of the proceeding within 7 days of an asylum seeker's requesting a bond
 26 hearing. ~~defendant EOIR's~~ —practice of placing the burden of proof on the detained asylum

1 seeker to demonstrate they are eligible for release~~should be granted a bond~~, and Defendant
 2 EOIR's failure to make specific, particularized findings when denying a bond release.

3 **VII. CAUSES OF ACTION**

4 **COUNT I**

5 **(Violation of Due Process)Constitutional Violations**

6 ~~159-147.~~ All of the foregoing allegations ~~in this Amended Complaint that are not~~
 7 ~~inconsistent with this Count~~ are repeated and re-alleged as though fully set forth ~~in this~~
 8 ~~numbered paragraph herein~~.

9 ~~160.~~ The Due Process Clause of the Fifth Amendment applies to all “persons” on
 10 United States soil and thus applies to ~~Mss. Guzman, Orantes, and Padilla and their children as~~
 11 ~~well as Mr. Vasquez and all proposed class members. The Fifth Amendment of the United States~~
 12 ~~Constitution prohibits the federal government from depriving any person of their liberty without~~
 13 ~~due process of law.~~

14 ~~161.~~ The Fifth Amendment’s due process clause applies to all persons in the United
 15 States.

16 ~~162.~~ The Eighth Amendment of the United States Constitution prohibits
 17 ~~the federal government from imposing or inflicting on any person any~~
 18 ~~excessive bail or any cruel punishments.~~

19 ~~163.~~ The Eighth Amendment’s protections apply to all persons in the
 20 United States.

21 ~~164.~~ Asylum seekers who cross the United States border are persons.

22 ~~165-148.~~ The named plaintiffs are persons ~~are in the United States. Their children~~
 23 ~~in federal government custody are persons are in the United States. The proposed class members~~
 24 ~~identified in Section VI of this Amended Complaint are persons in the United States.~~

25 ~~166.~~ The named plaintiffs, ~~their children~~, and proposed class members have a
 26 constitutionally protected liberty interest in (1) remaining together as a family, (2) not being

imprisoned in federal detention for an unreasonable time awaiting their credible fear interview and determination, ~~and (2)~~ not being imprisoned in federal detention for an unreasonable time awaiting their bond hearing, and (3) having a bond hearing that is fair and comports with due process.

167.149. Especially with respect to the federal government's zero-tolerance policy to deter criminal violations of federal immigration laws, the plaintiffs, their children, and proposed class members have a constitutionally protected interest in (4) not being subjected to unreasonable bond conditions [ga1], and (5) not being subjected to cruel punishments.

A. "Family Separation Class"

168. The federal government's forcibly separating plaintiffs Padilla, Guzman, and
Orantes from their children violated the substantive due process rights of plaintiffs and their
children. That forced separation did not further a legitimate purpose. That forced separation did
not further a compelling governmental interest. Defendants' forcibly separating plaintiffs
Padilla, Guzman, and Orantes from their children violated the constitutional substantive due
process rights of plaintiffs and their children.

169. The federal government's forcibly separating plaintiffs Padilla, Guzman, and Orantes from their children violated the procedural due process rights of plaintiffs and their children. The government did not make any accusation that plaintiffs were unfit parents, were not acting in the best interest of their child, were a threat to their child's safety, abused their child, or neglected their child. The government did not have any evidence of plaintiffs being unfit parents, or not acting in the best interest of their child, or being a threat to their child's safety, or abusing their child, or neglecting their child. Defendants' forcibly separating plaintiffs Padilla, Guzman, and Orantes from their children without any hearing violated the constitutional procedural due process rights of plaintiffs and their children.

170. The federal government's forcibly separating plaintiffs Padilla, Guzman, and Orantes from their children violated the Eighth Amendment. That forced separation was cruel

1 ~~and excessive. It was deliberately done to penalize and deter persons from seeking asylum. And~~
 2 ~~it was deliberately done as part of the federal government's zero tolerance policy against~~
 3 ~~criminal violations of federal immigration laws. Defendants' forcibly separating plaintiffs~~
 4 ~~Padilla, Guzman, and Orantes from their children violated the constitutional Eighth Amendment~~
 5 ~~rights of plaintiffs and their children.~~

6 ~~171. As with plaintiffs Padilla, Guzman, and Orantes, defendants' forcibly separating~~
 7 ~~members of the family separation class from their children violated substantive due process,~~
 8 ~~procedural due process, and the Eighth Amendment.~~

9 **B. "Credible Fear Interview Class"**

10 ~~172.150. The federal government's imprisoning plaintiffs and members of the~~
 11 ~~Credible Fear Interview Class~~ in federal detention for an unreasonable time awaiting their
 12 credible fear interview and determination violates their substantive due process rights. The
 13 government's prolonging these asylum seekers' federal detention by delaying their credible fear
 14 interview and determination more than 10 days does not further a legitimate purpose. The
 15 government's prolonging these asylum seekers' federal detention by delaying their credible fear
 16 interview and determination more than 10 days does not further a compelling governmental
 17 interest. Defendants' prolonging ~~their plaintiffs'~~ federal detention by delaying their credible fear
 18 interview and determination more than 10 days is a violation of the constitutional substantive due
 19 process rights of plaintiffs and their children ~~as well as of members of the Credible Fear~~
 20 ~~Interview Class.~~

21 ~~173. The federal government's imprisoning plaintiffs and members of the Credible~~
 22 ~~Fear Class~~ in federal detention for an unreasonable time awaiting their credible fear interview
 23 and determination violates their procedural due process rights. That ongoing imprisonment
 24 awaiting a credible fear interview and determination is contrary to the law governing expedited
 25 removal proceedings and is imposed without any hearing. Defendants' imprisoning plaintiffs
 26 ~~and members of the Credible Fear Interview Class~~ in federal detention for an unreasonable time

1 awaiting their credible fear interview and determination is a violation of the constitutional due
 2 process rights of plaintiffs and their children as well as of members of the Credible Fear
 3 Interview Class.

4 ~~7. The federal government's imprisoning plaintiffs in federal detention for an~~
 5 ~~unreasonable time awaiting their credible fear interview and determination violates the Eighth~~
 6 ~~Amendment. The government's actions maintaining plaintiffs in limbo in federal detention by~~
 7 ~~deliberately delaying the threshold credible fear interview to which they are entitled is excessive.~~
 8 ~~It is deliberately done as part of the government's effort to penalize and deter persons from~~
 9 ~~seeking asylum. It is deliberately done as part of the federal government's zero tolerance policy~~
 10 ~~against criminal violations of federal immigration laws. Deliberately confining asylum seekers~~
 11 ~~in limbo by delaying the credible fear interview to which they are entitled is cruel. Defendants'~~
 12 ~~imprisoning plaintiffs in federal detention for an unreasonable time awaiting their credible fear~~
 13 ~~interview and determination is a violation of the constitutional Eighth Amendment rights of~~
 14 ~~plaintiffs and their children.~~

15 ~~7. As with plaintiffs, defendants' imprisoning members of the credible fear~~
 16 ~~interview class in federal detention for an unreasonable time awaiting their~~
 17 ~~credible fear interview and determination violates substantive due process,~~
 18 ~~procedural due process, and the Eighth Amendment.~~

19 E.151. "Bond Hearing Class"

20 ~~174-152. The federal government's imprisoning plaintiffs and members of the Bond~~
 21 ~~Hearing Class~~ in federal detention for an unreasonable time awaiting a bond hearing to assess
 22 their eligibility for release set reasonable conditions for their release pending the lengthy
 23 proceedings to adjudicate their asylum claim violates substantive due process. The
 24 government's prolonging these asylum seekers' federal detention by delaying their bond hearing
 25 more than 7 days does not further a legitimate purpose. The government's prolonging these
 26 asylum seekers' federal detention by delaying their bond hearing more than 7 days does not

1 further a compelling governmental interest. Moreover, denying ~~bonds-release~~ for general
 2 deterrence or punishment goals unrelated to the specific factors of whether the individual
 3 presents a flight risk or danger to the community unlawfully deprives these asylum seekers of
 4 their constitutional right to liberty. Defendants' prolonging plaintiffs' and members of the Bond
 5 Hearing Class's federal detention by delaying their bond hearing more than 7 days is a violation
 6 of the constitutional substantive process rights of plaintiffs and ~~their children as well as of~~
 7 members of the Bond Hearing Class.

8 175.—The federal government's imprisoning plaintiffs and members of the Bond
 9 Hearing Class in federal detention for an unreasonable time awaiting a bond hearing to assess
 10 their eligibility for set reasonable conditions for their release pending the lengthy proceedings to
 11 adjudicate their asylum claim violates procedural due process. That ongoing detention is
 12 imposed without providing ~~basic procedural protections, such as~~ a bond hearing with a transcript
 13 or recording of the hearing and specific, particularized findings with respect to any denial of
 14 release, thereby and denies ~~ying~~ plaintiffs and members of the Bond Hearing Class an adequate
 15 record to file an administrative appeal or habeas petition. Moreover, denying ~~bonds-release~~ for
 16 general deterrence goals unrelated to the specific factors of whether the individual presents a
 17 flight risk or danger to the community strips detained asylum seekers of a fair hearing. What is
 18 more, placing the burden on the noncitizen to demonstrate their eligibility for release entitlement
 19 to bond also constitutes a violation of their due process rights. Defendants' prolonging plaintiffs'
 20 and members of the Bond Hearing Class's federal detention by failing to provide a bond hearing
 21 where the burden of proof is on the government and with a verbatim transcript or recording of
 22 the hearing within 7 days of requesting a bond is a is a violation of the constitutional substantive
 23 due process rights of plaintiffs and their children as well as of members of the Bond Hearing
 24 Class.

25 176-153. The federal government's imprisoning plaintiffs for an unreasonable time
 26 pending the lengthy proceedings to adjudicate their asylum claim violates the Eighth

1 ~~Amendment. The government's keeping their detention in limbo by deliberately delaying the~~
 2 ~~bond hearing to which they are entitled is excessive. Moreover, the government's~~
 3 ~~determinations to deny bond for general deterrence policy purposes, rather than based on~~
 4 ~~individual determinations based on evidence that the person presents a flight risk or threat to the~~
 5 ~~community, violates the Eighth Amendment. It is deliberately done as part of the government's~~
 6 ~~effort to penalize and deter persons from seeking asylum. It is deliberately done as part of the~~
 7 ~~federal government's zero tolerance policy against criminal violations of federal immigration~~
 8 ~~laws. Deliberately confining detained asylum seekers by delaying bond hearings and denying~~
 9 ~~bond for general deterrence and policy measures unrelated to their individual cases is cruel.~~
 10 ~~Defendants' imprisoning plaintiffs in federal detention for an unreasonable time pending the~~
 11 ~~lengthy proceedings to adjudicate their asylum claim by failing to provide a bond hearing with a~~
 12 ~~verbatim transcript or recording of the hearing within 7 days of plaintiffs requesting a bond~~
 13 ~~hearing is a violation of the constitutional Eighth Amendment rights of plaintiffs and their~~
 14 ~~children.~~

15 ~~177. As with plaintiffs, defendants' imprisoning members of the bond hearing class in~~
 16 ~~federal detention for an unreasonable time awaiting a bond hearing to set reasonable conditions~~
 17 ~~for their release pending the lengthy proceedings to adjudicate their asylum claim violates~~
 18 ~~substantive due process, procedural due process, and the Eighth Amendment.~~

19 **COUNT II**
 20 **(Administrative Procedure Act—~~Arbitrary and Capricious Practice~~)**

21
 22 ~~All allegations in this Amended Complaint that are not inconsistent with~~
 23 ~~this Count are repeated and re alleged as though fully set forth in this~~
 24 ~~numbered paragraph.~~

25 ~~1. All of the foregoing allegations are repeated and re-alleged as though fully set~~
 26 ~~forth herein.~~

27 ~~1. The APA prohibits agency action that is arbitrary and capricious and.~~

1 ~~1. The APA prohibits agency action that is contrary to a constitutional right.~~

2 ~~5 U.S.C. §706(2).~~

3 ~~**D. “Family Separation Class”**~~

4 ~~1. Defendants’ decision to separate plaintiffs Padilla, Guzman, and Orantes~~
5 ~~from their children without a compelling justification, and without a~~
6 ~~mechanism, protocol, or system to guarantee their reunification, is a final~~
7 ~~agency action. That action is arbitrary and capricious. It violates the~~
8 ~~APA. 5 U.S.C. §706(2)(A).~~

9 ~~1. As with plaintiffs Padilla, Guzman, and Orantes, defendants’ decision to~~
10 ~~decision to separate members of the family separation class from their~~
11 ~~children without a compelling justification, and without a mechanism,~~
12 ~~protocol, or system to guarantee their reunification, is a final agency~~
13 ~~action. That action is arbitrary and capricious. It violates the APA.~~

14 ~~5 U.S.C. §706(2)(A).~~

15 ~~**A.154. “Credible Fear Interview Class”**~~

16 ~~178. Defendants’ decision to detain plaintiffs and members of the Credible Fear~~
17 ~~Interview Class~~ for an unreasonable time awaiting their credible fear interview, without a
18 compelling justification and without a mechanism, protocol, or system to assure a prompt and
19 fair credible fear interview and determination, is a final agency action. That action ~~is arbitrary~~
20 ~~and capricious. It violates the APA. 5 U.S.C. §§706(1) and (2)(A) and (B).~~

21 ~~1. As with plaintiffs, defendants’ decision to detain members of the credible fear~~
22 ~~interview class for an unreasonable time awaiting their credible fear interview, without a~~
23 ~~compelling justification and without a mechanism, protocol, or system to assure a prompt and~~
24 ~~fair credible fear interview and determination, is a final agency action. That action is arbitrary~~
25 ~~and capricious. It violates the APA. 5 U.S.C. §706(2)(A).~~

26 ~~**C.155. “Bond Hearing Class”**~~

1 ~~179-156.~~ Defendants' decision to detain plaintiffs and members of the Bond
 2 Hearing Class for an unreasonable time awaiting a bond hearing to set reasonable conditions for
 3 their release pending the lengthy proceedings to adjudicate their asylum claim, without a
 4 compelling justification and without a mechanism, protocol, or system to assure a prompt and
 5 fair bond hearing, is a final agency action. That action ~~is arbitrary and capricious. It violates the~~
 6 ~~APA. 5 U.S.C. §§706(1) and (2)(A) and (B).~~

7 ~~180. As with plaintiffs, defendants' decision to detain members of the bond hearing class for~~
 8 ~~an unreasonable time awaiting a bond hearing to set reasonable conditions for their release~~
 9 ~~pending the lengthy proceedings to adjudicate their asylum claim, without a compelling~~
 10 ~~justification and without a mechanism, protocol, or system to assure a prompt and fair bond~~
 11 ~~hearing, is a final agency action. That action is arbitrary and capricious. It violates the APA.~~
 12 ~~5 U.S.C. §706(2)(A).~~

14 ~~181-157.~~ Defendants' decision to deny plaintiffs and members of the Bond Hearing
 15 Class a bond hearing with adequate procedural protections, specifically a hearing where the
 16 burden of proof is on the government, and a recording or transcript of the hearing ~~is~~ available
 17 for any subsequent administrative appeal or habeas petition, and specific, particularized findings
 18 of any denial of release, is a final agency action. That action ~~is arbitrary and capricious. It~~
 19 violates ~~the APA. 5 U.S.C. §§706(1) and (2)(A) and (B).~~

20 ~~182. As with plaintiffs, defendants' decision to deny members of the bond hearing~~
 21 ~~class a bond hearing with adequate procedural protections, specifically a recording or transcript~~
 22 ~~of the hearing available for any subsequent administrative appeal or habeas petition, is, is a final~~
 23 ~~agency action. That action is arbitrary and capricious. It violates the APA.~~
 24 ~~5 U.S.C. §706(2)(A).~~

COUNT III(Administrative Procedure Act
Agency Action Unlawfully Withheld or Unreasonably Delayed)

185. ~~All allegations in this Amended Complaint that are not inconsistent with this Count are
repeated and re-alleged as though fully set forth in this numbered paragraph. All of the foregoing
allegations are repeated and re-alleged as though fully set forth herein.~~

186-158. The APA imposes on federal agencies the duty to conclude matters presented to it within a “reasonable time.” 5 U.S.C. §555(b).

7. The APA prohibits agency action that is “unlawfully withheld or unreasonably delayed.” 5 U.S.C. §706(1).

B. “Family Separation Class”

7. ~~Defendants’ failure to promptly reunify plaintiffs Padilla, Guzman, and
Orantes with their children violates defendants’ legal duty under the APA
to conclude matters within a reasonable time, and constitutes an agency
action unlawfully withheld or unreasonably delayed in violation of the
APA. 5 U.S.C. §706(2)(A).~~

7. ~~As with plaintiffs Padilla, Guzman, and Orantes, defendants’ failure to
failure to promptly reunify members of the family separation class with
their children violates defendants’ legal duty under the APA to conclude
matters within a reasonable time, and constitutes an agency action that is
unlawfully withheld or unreasonably delayed in violation of the APA.
5 U.S.C. §706(2)(A).~~

A.159. “Credible Fear Interview Class”

187. ~~A person placed in expedited removal proceedings who is seeking asylum is
allowed to present their asylum claim to an immigration judge only after DHS conducts a~~

1 ~~credible fear interview to determine if the person seeking asylum has a “credible fear of~~
 2 ~~persecution.” 8 C.F.R. §208.30(f), (g).~~

3 ~~188. Defendant DHS and its sub-agencies are required to conduct an interview to~~
 4 ~~assess whether an asylum seeker has a credible fear of persecution. Conducting a credible fear~~
 5 ~~interview to determine whether a person seeking asylum has a credible fear of persecution is a~~
 6 ~~discrete, final agency action that DHS is required to take.~~

7 ~~160. DHS’s obligation to conduct a credible fear interview to determine whether the~~
 8 ~~person seeking asylum has a credible fear of persecution. This obligation~~ is triggered when ~~that~~
 9 ~~person requests asylum or expresses a fear of persecution to any DHS official. Defendants learn~~
 10 ~~of an individual’s fear of persecution. See~~ 8 U.S.C. §1225(b)(1)(A)(ii). ~~Asylum seekers are only~~
 11 ~~permitted to raise their claims before an immigration judge after the asylum officer’s credible~~
 12 ~~fear determination. See~~ 8 C.F.R. § 208.30(f), (g).

13 ~~189.161. Conducting a credible fear interview to determine whether a person~~
 14 ~~seeking asylum has a credible fear of persecution is a discrete, final agency action that DHS is~~
 15 ~~required to take.~~

16 ~~190. DHS’s Defendants’ failure to promptly expeditiously~~ conduct a credible fear
 17 ~~interview after detaining plaintiffs and members of the Credible Fear Interview class for the~~
 18 ~~credible fear determination after plaintiffs requested asylum or expressed a fear of persecution~~
 19 ~~violated DHS’s legal duty~~ constitutes “an agency action unlawfully withheld or unreasonably
 20 ~~delayed” under the APA. See~~ 5 U.S.C. § 706(1) to conclude matters presented to it within a
 21 ~~reasonable time.~~

22 ~~7. DHS’s failure to promptly conduct a credible fear interview for the credible fear~~
 23 ~~determination after plaintiffs requested asylum or expressed a fear of persecution constituted an~~
 24 ~~agency action that was unlawfully withheld or unreasonably delayed in violation of the APA.~~

25 ~~7. As with plaintiffs, DHS’s failure to promptly conduct a credible fear~~
 26 ~~interview for the credible fear determination after members of the credible~~

~~fear interview class requested asylum or expressed a fear of persecution violates its legal duty under the APA to conclude matters presented to it within a reasonable time, and constituted an agency action that is unlawfully withheld or unreasonably delayed in violation of the APA.~~

D.162. "Bond Hearing Class"

191.163. If the ~~credible fear interview conducted by DHS asylum officer~~ determines that an asylum seeker has a credible fear of persecution, ~~DHS assigns~~ the case is transferred to EOIR ~~to initiate immigration court proceedings for that~~for adjudication of the asylum claim by ~~asylum seeker to adjudicate his or her asylum claim before~~ an immigration judge.

192.164. If an asylum seeker in the bond hearing class is found to have a credible fear of persecution and is in federal detention, that an asylum seeker is in the Bond Hearing Class is entitled to a bond hearing to assess eligibility set reasonable conditions for his or her release from federal DHS custody detention pending the lengthy proceedings to adjudicate his or her asylum claim.

193.165. Defendant EOIR's failure to promptly conduct a bond hearing for plaintiffs and members of the Bond Hearing Class within 7 days to set reasonable conditions for a detained asylum seeker's their release pending the lengthy proceedings to adjudicate his or her asylum claim violates defendant's legal duty under the APA to conclude matters presented to it within a reasonable time.

194.166. Defendant EOIR's failure to conduct a bond hearing for plaintiffs and members of the Bond Hearing Class with appropriate procedural safeguards ~~to set reasonable conditions for a detained asylum seeker's release pending the lengthy proceedings to adjudicate his or her asylum claim~~ constitutes an agency action unlawfully withheld or unreasonably delayed in violation of the APA

195. As with plaintiffs, defendant EOIR's failure to promptly conduct a bond hearing with appropriate procedural safeguards to set reasonable conditions for a detained asylum

1 ~~seeker's release pending the lengthy proceedings to adjudicate his or her asylum claim violates~~
 2 ~~its legal duty under the APA to conclude matters presented to it within a reasonable time, and~~
 3 ~~constitutes an agency action that is unlawfully withheld or unreasonably delayed in violation of~~
 4 ~~the APA.~~

5 **COUNT III**
 6 **(Violation of Asylum Law Statute)**

7 ~~196.167. All of the foregoing allegations are repeated and re-alleged as though~~
 8 ~~fully set forth herein~~~~allegations in this Amended Complaint that are not inconsistent with this~~
 9 ~~Count are repeated and re-alleged as though fully set forth in this numbered paragraph.~~

10 ~~197.168. United States law~~The Immigration and Nationality Act grants noncitizens
 11 fleeing persecution the opportunity to apply for asylum in the United States.
 12 8 U.S.C. §1225(b)(1) (expedited removal); 8 C.F.R. §§ 235.3(b)(4), 208.30, & 1003.42;
 13 8 U.S.C. §1158(a)(1).

14 ~~198.169. International law likewise recognizes the fundamental human right to~~
 15 ~~asylum of persons fleeing for safety from persecution and torture.~~

16 ~~1. Noncitizens fleeing persecution have a private right of action to vindicate their~~
 17 ~~right to apply for and receive asylum in the United States.~~

18 **B. "Family Separation Class"**

19 ~~1. When plaintiffs Padilla, Guzman, and Orantes requested asylum,~~
 20 ~~defendants promptly took their minor child away from them (1) without~~
 21 ~~any evidence or accusation that they were unfit parents, or were not acting~~
 22 ~~in the best interest of their child, or were a threat to their child's safety, or~~
 23 ~~abused their child, or neglected their child, and (2) without any hearing.~~

24 ~~1. Defendants' promptly taking away the minor children of asylum seekers~~
 25 ~~seekers Padilla, Guzman, and Orantes unlawfully infringed on their legal~~
 26 ~~right to pursue their asylum claims.~~

1. As with plaintiffs Padilla, Guzman, and Orantes, defendants separated
2 members of the family separation class from their child (1) without any
3 evidence or accusation that they were unfit parents, or were not acting in
4 the best interest of their child, or were a threat to their child's safety, or
5 abused their child, or neglected their child, and (2) without any hearing.

1. As with plaintiffs Padilla, Guzman, and Orantes, defendants' promptly
2 promptly taking away the minor children of members of the family
3 separation class unlawfully infringed on their legal right to pursue their
4 asylum claims.

G.170. "Credible Fear Interview Class"

199. Defendants' failure to promptly conduct a credible fear interview for ~~the credible~~
fear determination after plaintiffs requested asylum or expressed a fear of persecution plaintiffs
and members of the Credible Fear Interview Class violates the asylum statute because it
unlawfully infringed infringes on their legal rightability to pursue their asylum claims.

1. As with plaintiffs, defendants' failure to promptly conduct a credible fear
interview for the credible fear determination after credible fear interview class members
requested asylum or expressed a fear of persecution unlawfully infringes on their legal right to
pursue their asylum claims.

I.171. "Bond Hearing Class"

200-172. Defendants' failure to promptly conduct a bond hearing to assess
eligibility for set reasonable conditions for the release of plaintiffs and members of the Bond
Hearing Class pending the lengthy proceedings to adjudicate their asylum claims violates the
asylum statute because it unlawfully infringes on their legal rightability to pursue their asylum
claims.

8. As with plaintiffs, defendants' failure to promptly conduct a bond hearing to set
reasonable conditions for the release of members of the bond hearing class pending the lengthy

1 ~~proceedings to adjudicate their asylum claims unlawfully infringes on their legal right to pursue~~
2 ~~their asylum claims.~~

3 **IX. VIII. PRAYER FOR RELIEF**

4 Plaintiffs respectfully request that this Court enter judgment against defendants granting
5 the following relief:

6 **A. Certify the following Family Separation Class:** ~~“All parents who sought asylum and~~
7 ~~were (1) detained in immigration custody by defendants in Washington State and~~
8 ~~(2) separated from a minor child by defendants absent a demonstration in a hearing~~
9 ~~that that parent is unfit or presents a danger to the child.”~~

10 **B. Name plaintiffs Padilla, Guzman, and Orantes as representatives of the Family**
11 **Separation Class, and appoint their counsel as Family Separation Class counsel.**

12 **C. Declare that defendants’ separation of plaintiffs Padilla, Guzman, and Orantes from**
13 **their children is unlawful.**

14 **D. Declare that defendants’ separation of Family Separation Class members from their**
15 **children is unlawful.**

16 **E. Preliminarily and permanently enjoin defendants from detaining Family Separation**
17 **Class members (including plaintiffs Padilla, Guzman, and Orantes) in separate**
18 **locations from where their children are detained; and enjoin defendants from**
19 **removing Family Separation Class members (including plaintiffs Padilla, Guzman,**
20 **and Orantes) from the country until they are reunited with their children (in the event**
21 **they are not permitted to remain in the United States), absent the parent’s permission**
22 **or a hearing before a court where the government demonstrates that it is not in the**
23 **child’s best interest to be reunified with their parent.**

24 **F.A. Certify the following Credible Fear Interview Class:** ~~“All detained asylum~~
25 ~~seekers in the United States subject to expedited removal proceedings under~~

1 8 U.S.C. §1225(b) who are not provided a credible fear determination within 10 days
2 of requesting asylum or expressing a fear of persecution to a DHS official.”

3 **G.B.** Name plaintiffs as representatives of the Credible Fear Interview Class, and
4 appoint their counsel as class counsel.

5 **H.C.** Declare that defendants have an obligation to provide Credible Fear Interview
6 Class members (~~including plaintiffs~~) their credible fear interview and determination
7 within 10 days of that person’s requesting asylum or expressing a fear of persecution
8 to any DHS official.

9 **I.D.** Preliminarily and permanently enjoin defendants from not providing Credible
10 Fear Interview Class members (~~including plaintiff Vasquez~~) their credible fear
11 determination within 10 days of that person’s requesting asylum or expressing a fear
12 of persecution to any DHS official.

13 **J.E.** Certify the following **Bond Hearing Class**: -“All detained asylum seekers who
14 entered the United States without inspection, were initially subject to expedited
15 removal proceedings under 8 U.S.C. §1225(b), were determined to have a credible
16 fear of persecution, but are not provided a bond hearing with a verbatim transcript or
17 recording of the hearing within 7 days of requesting a bond hearing.”

18 **K.F.** Name plaintiffs as representatives of the Bond Hearing Class, and appoint their
19 counsel as class counsel.

20 **L.G.** Declare that defendants have an obligation to provide Bond Hearing Class
21 members (~~including plaintiffs~~) a bond hearing within 7 days of their requesting a
22 hearing to set reasonable conditions for their release pending adjudication of their
23 asylum claim.

24 **H.** Declare that defendants have an obligation to provide Bond Hearing Class members
25 (~~including plaintiffs~~) a bond hearing with adequate procedural safeguards, including a
26 verbatim transcript or recording of their bond hearing.

1 I. Declare that defendant DHS must bear the burden of proof to show continued
2 detention is necessary in civil immigration proceedings.

3 M.J. Declare that in bond hearings immigration judges must make specific,
4 particularized written findings as to the basis for denying release from detention,
5 including findings identifying the basis for finding that the individual is a flight risk
6 or a danger to the community.

7 N.K. Preliminarily and permanently enjoin defendants from not providing Bond
8 Hearing Class members (including plaintiffs Guzman, Orantes, and Vasquez) their
9 bond hearing with a verbatim transcript or recording of their bond hearing.

10 L. Preliminarily and permanently enjoin defendants from not providing Bond Hearing
11 Class members (including plaintiffs Orantes and Vasquez) their bond hearing within
12 7 days of the asylum seeker's request.

13 M. Preliminarily and permanently enjoin defendants from not providing Bond Hearing
14 Class members bond hearings where defendant DHS bears the burden of proof to
15 show continued detention is necessary.

16 N. Preliminarily and permanently enjoin defendants from not providing Bond Hearing
17 Class members where immigration judges make specific, particularized written
18 findings as to the basis for denying release from detention, including findings
19 identifying the basis for finding that the individual is a flight risk or a danger to the
20 community for any determination that the individual is a flight risk or a danger to the
21 community when denying bond.

22 O.N.

23 P.O. Order defendants to pay reasonable attorneys' fees and costs.

24 Q.P. Order all other relief that is just and proper.

1
2
3 Dated this 15th day of July, 2018.
4

5 s/ Matt Adams

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26 *Application for *pro hac vice* admission
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CERTIFICATE OF SERVICE

I hereby certify that on July 15, 2018, I had the foregoing electronically filed with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to those attorneys of record registered on the CM/ECF system. All other parties (if any) shall be served in accordance with the Federal Rules of Civil Procedure.

DATED this 15th day of July, 2018.

s/ Thomas F. Ahearne

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